

SENATE TRADITIONS AND NORMS AND ITS IMPACT ON THE  
POLICYMAKING PROCESS

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## **Abstract**

Much has been discussed about the Senate and its role in the overall policymaking process. In order to understand the body's overall role, it is essential to understand how the internal facets of this complex legislative body. By reviewing floor procedures, leadership styles, and committee structure- one will be able to understand both the Senate's shortcomings in unable to produce effective and meaningful legislation as well as the Senate's ability to overcome structural strife. However, these negative aspects of the body's traditions and norms have made the Senate a difficult body for deliberative policy action, as such; reform is required for the body to become a fully functioning part of the nation's policymaking process.

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# **Chapter One: Introduction- The Senate's Role in the Policymaking Process**

The United States Senate is an integral part of the policymaking process. The President, the Senate the House of Representatives, and the Supreme Court all have a unique role in the process. A chamber of the legislative branch, the Senate is viewed upon as a deliberative body where pieces of legislation are usually slowed to a pace to so it can be “improved” upon. This paper will examine the uniqueness of the Senate- which is a body ruled by traditions and norms. This paper will examine the role of floor procedures, leadership, and committees and how each impacts the process. Also, this paper seeks to highlight and propose how to fix the inherent problem of the Senate: the tension between the individual nature of the Senate versus its role in the policymaking process.

## **The “So What” Question**

### *Scholarship*

An essential question to answer is the notorious “so what” question. Why is this topic important in to not just scholarship, but to the general public as well. First, the amount of literature written on the Senate pales in comparison to the House. From a statistical standpoint, it is easier to assess the behavior of 435 people as compared to 100. Also it is generally accepted that Senators have more individual power therefore their dynamics within the body and others members may not be as much interest. The latter half of that statement is not necessarily true. As this paper will demonstrate, the dynamics within the Senate are extremely interesting due to the overall belief that individual members have an enormous amount of power and influence, particularly on the

policymaking process. The purpose of this paper is to review the Senate's uniqueness and how it impacts, whether negatively or positively, on the policymaking process. This study will make a contribution to an area where more congressional scholarship should focus on.

### *General Public*

The "so what" question for the general public is easily defined. Over the last few decades, gridlock has become the norm in the policymaking process. It is important to understand and note that the Senate has been a major contributor to this gridlock. The public should know why that is the case. This paper will examine the Senate's role in gridlock, and offer a solution to the problem. As mentioned above, the Senate is a place where legislation is slowed down and is more of a deliberative body than the House. However, slowing legislation and further reviewing it is different from not allowing any or little legislation to pass at all. Gridlock has not only been harmful to policymaking, but has harmed the public's perception on the Senate as well. It is imperative that this issue of gridlock be resolved, for the institution's legitimacy but also so that public policies that benefit the public will be implemented.

### **Literature & Schools of Thought**

#### *Behaviorists*

There are two schools of thought when studying legislative bodies. One school of thought is behaviorism. This school of thought purely studies how actors behave individually and amongst each other. This school of thought does not take into account the institutions of norms, rules, and traditions. The behavior of the actors is the main focus as these actors in essence control the institution. Behaviorists study how actors

interact with their consciences, constituents, and colleagues. Understanding how these actors behave provides key insight in how the institution is run and if it is effective.

### *Historical Institutionalism*

Historical institutionalism studies both the behavior and the institution. It also studies this relationship in a historic context. This school of thought does not state that the behavior of individual actors alone can explain an institution; it is more complicated than just the actors. It also does not accept the idea that the behaviors control the institution. In fact, Historic Institutionalism argues that constrains the behavior of actors. Specifically, the institutions rules and norms constrains how actors behave and this it is how the actors behave in the institutional framework that can best understand a legislative body. Also, history is important and relevant. Institution's constrains can change over time, and one should study how new rules and norms have impacted the policymaking process over a certain historical timeframe.

This paper falls into the historical institutionalism school of thought. The institution does matter. Senators are behaving in the context that is provided and mandated by the institution. These are what we know as norms, rules, and traditions. These are constrains put on actors, therefore they do not behave in free-will style, like behaviorists would tend to argue. Also, this paper examines these constrains from a historic perspective. Rules and norms do change over time, and actors have to adapt to new adjustments. The fact that these rules and norms do change is a further constraint on the behavior of actors. As this paper will show, senators are constantly constrained by these norms and rules; therefore they act in appropriate ways that this context demands. The following chapters will demonstrate the relationship between actors and the rules.

## **Road Map**

### *Floor Procedures*

The first chapter of this paper examines the impact floor procedures, namely the filibuster, has on the policymaking process. This chapter is historic in nature as it provides a historical prospect on the creation of the filibuster and how it's evolved over time. This chapter is divided into several eras of which the filibuster became evolved into a detriment to the policymaking process instead of enhancing the deliberation. This chapter is a stark reminder that rules and norms of an institution dominate the behavior of actors. This dynamic is certainly seen playing a role as the usage of the filibuster has continued to evolve.

This chapter will also make recommendations in terms of changing the filibuster. What is apparent now more than ever is that this tactic is a major reason for the gridlock that is currently gripping Washington DC. The chapter will demonstrate how this became a problem and why the filibuster is evolved into a procedure that is not what it was originally intended to do. The original intent of the filibuster was to protect minority rights in a body control by a majority. However, it has now moved the burden of proof of passing legislation to the majority, not protecting minority rights. This dynamic change has hindered the policymaking process and should be studied in how it evolved and what changes should be made.

### *Committees*

The second chapter focuses on the committee structure and whether the current system hampers or facilitates policymaking. Committees are an essential part of the policymaking process. In committee, a bill is first debated upon and the ability for



amendments is supposed to not just improve the content of the bill but may also help improve the chances of its passage. Specifically, the focus of the chapter is whether the Senate has a committee jurisdictional issue. Known as “turf wars,” this is a constant problem found in the House as two or more committees fight over what jurisdiction each has on a particular bill. These “turf wars” generally delay a bill and is sometimes to blame for a policy never being developed and implemented.

The chapter will use two different case studies involving health care reform. These two cases give key insight in whether jurisdictional issues are a problem in the Senate. The first case study is the 1993 attempt at reform and that the second discusses the legislative history of the Affordable Care and Patient Protection Act. The case studies will show how committees in the Senate were able to overcome the usual and predictable problems that arise from turf wars. The chapter also examines the use of bill referral as that is important component of jurisdictional issues. This chapter certainly highlights the institutional restraints on senators, but provides an insight that these restraints may facilitate deliberation and thus allowing for significant pieces of legislation to move forward.

### *Leadership*

The third and last chapter discusses the role of the Majority Leader of the Senate in the policymaking process. This chapter will use case studies to understand the Leader’s role during this process. Namely, the focus will be on leadership styles and whether styles matter. The case studies are also historic in nature as they contain the tenures of Senator Mike Mansfield (D-MT), Senator Trent Lott- (R-MS), and Senator Harry Reid (D-NV). These three senators have different styles and are from different time periods. The case

studies reflect on how these Leaders interacted with their caucuses/conferences as well as major legislative issues of their time.

The purpose of this chapter is to find out if a Leader's style is the most important factor in determining if a piece of legislation is passed. The chapter does not study whether the Leader can stop a piece of legislation from passing as this paper is measuring outcomes. The chapter will determine whether styles are personal, or if they are forced due to external factors that the Leaders have no choice but to impose. This will certainly highlight the constraints of individual behavior in an institutional setting.

### *"Policymaking Process"*

It is essential to define what it means by discussing the policymaking process in this paper. For the purpose of this paper, the policymaking process is defined as the amount of legislation the Senate passes. It merely is a measure of output, not a discussion of the finite details of the process. Output is not the only way to define the process as it would also include whether the process is deliberative or takes into account external factors. In fact, the last chapter does discuss the deliberative process; however, the measure of success is a result of output. By defining the policymaking process as the amount of legislation a legislative body passes, it is easier to understand and prove whether institutional norms and traditions hamper or empower the process.

### **Conclusion**

This paper will provide a framework to understand how the Senate operates and its role in the overall policymaking process. It will fulfill this goal by centering on three facets of the institution. The first is floor procedures- every policy initiative is affected by how the Senate's floor rules are used and implemented. The second facet is leadership

and styles displayed by the Majority Leader. The Leader is a key figure in developing policies and by understanding whether leadership style is the most important factor in a bill's passage will help one understand the Senate as an institution. The third facet is committees and jurisdictional issues that may arise. As this paper has an historic intuitionist perspective, knowing the impact of the committee structure has on the policymaking process is vital. These chapters are all relatable to one another because it highlights the different facets of the relationship between senators and the institution. By examining these different areas, it will then be determined if problems exist, and what solutions should be suggested.

## **Chapter Two: Floor Procedure of the United States Senate- Does it Hamper the Policymaking Process?**

### **Introduction**

The filibuster is an important component of the legislative process in the United States Senate. Unlike the House of Representatives, where rules of debate are established before floor proceedings, the Senate allows for an unlimited amount of time for discussion on legislation. The filibuster has been as old as the Senate itself, changing overtime, but its purpose has remained the same: to be a last check on majoritarian rule. In the late 1800s the filibuster was being used more due to the complexity and sheer amount of legislation the Senate confronted. There was no formal mechanism to end a filibuster, and it became apparent that one needed to be established. In 1917 the Senate established a procedure known as cloture, which with a super-majority of senators voting in the affirmative, would end a filibuster and allow for a bill to have a final up or down vote. This paper will examine cloture's impact on filibustering.

The question this paper seeks to answer is: What has been the effect of cloture reforms in the Senate, particularly the 1975 reform that lowered the threshold from two-thirds present and voting to three-fifths of the entire chamber? In order to answer this question, this paper will give an historical analysis of the cloture rule. It will discuss the impetus for why cloture was formed in the first place. The paper will also examine how effective cloture was in the civil rights era. Finally the analysis will examine modern reforms that impact the Senate today, particularly the two-track system and the silent filibuster.

As mentioned above the cloture rule (Rule XXII) was established in 1917 after Senators could not come to an agreement over a militarization bill during World War I. Before the 1950s, cloture was rarely ever invoked. This was a time where senators respected each other's "right" to hold the floor and express his opinions. The Senate before the civil rights era was still seen as a "good 'ol boys" club that put mutual respect and admiration of colleagues before partisanship. This mutual respect would cease after numerous filibusters over civil rights legislation.

Southern conservatives throughout the 1950s had been successful in blocking civil rights legislation proposed by northern liberal members. It was during this time that several senators proposed a majoritarian cloture rule that would in effect abolish the filibuster. It was a time when the Senate was introspectively looking at its own rules to see if their chamber could overcome gridlock. While majoritarian cloture never passed, it did begin a debate about the proper usage of the filibuster. Was it really about respecting minority rights, or was it being abused to stop majority will? This question is now relevant today more than ever, has even the threat of a filibuster grinds a piece of legislation to a halt.

Reformers never achieved their goal of making cloture easier to invoke until 1975, when the threshold was reduced to sixty senators. Also, in the early 1970s, the Senate adopted a two-track system that allowed for more than one piece of legislation at a time. These changes were made in order to strengthen the filibuster. This paper will examine to see if that actually is the case. Did these reforms strengthen the cloture rule? Or did some have an adverse and unintended impact?

It is also notable that the filibuster highlights a key problem that the institution faces. The filibuster exacerbates the overall structure of the Senate, which promotes individualism. However, the Senate is a legislative body that plays a role in the policymaking process not only in terms of deliberation but in passing legislation. This tension is fundamentally compounding problems that the institution is facing. This chapter seeks to prove that the filibuster has only made this tension worse, as it has promoted the individual nature of the Senate.

The hypothesis to the question above is that cloture reforms would make a filibuster difficult to achieve and especially would be effective in ending filibusters because a lower threshold of senators that is required to invoke it. This paper will examine how we got to our present condition of gridlock and abuse of this minority right. The paper will study the amount of times cloture was filed, voted on, and invoked. The statistics will shine light on whether reforms have made it easier to invoke this rule, or if these reforms have had a negative impact on ending filibusters.

## **The Status Quo vs. Reforms: A Literature Review on the Filibuster Procedure in the U.S. Senate**

### *Introduction*

The filibuster is a unique component of the United States Senate. Much of the literature in regards to cloture and the filibuster is whether the process should be reformed. Over the last few years, the filibuster has become a part of the public conscience. As gridlock has increased over the last decade, Senators as well as the media have pressured for a renewed debate about whether the filibuster should be reformed. The debate includes how reform should look like and whether it should be reformed in the first place. This review will examine existing literature on the filibuster. This debate can be viewed as breaking gridlock, constitutional issues, and upholding Senate traditions. This literature review will also fit in the larger research aspect of this paper as it examines what previous attempts of filibuster reform produced.

### *The Filibuster- Defense of Minorities and Against Unpopular Policies*

It can be argued that the filibuster can be founded in the basis of what the government was built on: a profound trust in government.<sup>1</sup> The filibuster is a procedure is not a unique American legislative tool. Examples would include the appointed Canadian Senate and the “ox-step” found in the Japanese upper house.<sup>2</sup> Although they are not procedural tools, these examples show that other countries are taking steps to create a dilatory system. These are also examples that delay is a “time-honored political exercise.”<sup>3</sup> Since the House is built upon the “relentless” of the Westminster system, the

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<sup>1</sup> Bill Frenzel, "Defending the Dinosaur: The Case for Not Fixing the Filibuster." *The Brookings Review* 13 (3): 47.

<sup>2</sup> Frenzel, "Defending The Dinosaur," 48.

<sup>3</sup> Ibid.

Senate can be afforded more time to debate and examine legislation, thus making the filibuster necessary to achieve this legislative function.<sup>4</sup>

It is argued that the filibuster does not delay the public will, but that it stops unpopular policy.<sup>5</sup> In that same respect, the filibuster can be viewed as a key part of compromising. Bill Frenzel writes, “It [filibuster] gives a minority the opportunity to negotiate what it believes is an intolerable proposal into one it can live with. That compromise may serve the needs of the majority tolerably well too.”<sup>6</sup> Yes, the filibuster does increase the clout of the minority, but instead of viewing it as an obstruction, this procedure should be viewed as a negotiating tool that strengthens the policy aims of a particular bill.<sup>7</sup>

Many of these arguments defend the filibuster in that it has deep historic roots and is a check against a popularly elected House of Representatives. Several scholars do not have such a positive view of the filibuster. Although many of their arguments are unpopular does not mean it is invalid. It is important to note that the Frenzel article is a defense of the modern filibuster as he conceded that before changing the vote threshold to 60-votes it was a “killer” (ex: Civil Rights legislation).<sup>8</sup> This is an important and relevant point as this paper will study the impact the threshold change on the success rate of the filibuster. The pro-status quo community believes that the Senate is unique from the House as delay is good for public policy and that no successful filibuster or an immensely popular bill has occurred.

### *The Filibuster- Obstruction Against Progress*

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid. 49.

<sup>7</sup> Ibid. 48-49.

<sup>8</sup> Ibid. 49.



Over the years and especially most recently, much scholarship has been written about reforming the filibuster. Starting with the framers, these scholars argue that the filibuster was not conceived by the founding fathers. It was contended that the framers believed they developed the Senate in a way that a procedural tool as a check against rash decisions by the House would not be necessary.<sup>9</sup> Even though the filibuster was not developed by the founders, its origin occurred the Senate eliminated the “previous question” because it was seldom used. The House would later revamp the “previous question,” the Senate never did, therefore the origin of unlimited debate was founded by accident.<sup>10</sup> Cloture (the formal institutional step to stop a filibuster) was established in 1917. Before then there was no formal way to end a filibuster and would only ended when the minority was exhausted.<sup>11</sup>

While it is difficult to note how many filibusters have been attempted because one cannot assume a cloture vote occurred the use of the procedure has increase since the 1950s.<sup>12</sup> The Senate has become more “individualistic” as individual holds have increased at the same rate as filibusters and cloture votes.<sup>13</sup> Individual members felt more at ease with using the filibuster, and its adverse impact such as gridlock dysfunction became more apparent. Due to this increase of individualism, it is a myth that the filibuster is only successful if a program is not widely popular. An example would be from 103<sup>rd</sup> Congress as a law favoring restrictions on lobbyists that had large margins of public support and passed both chambers overwhelmingly could not overcome a

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<sup>9</sup> Sarah Binder & Thomas Mann, “Slaying the Dinosaur: The Case for Reforming the Senate Filibuster.” *The Brookings Review* 13 (3): 42.

<sup>10</sup> Binder & Mann, “Slaying The Dinosaur,” 43.

<sup>11</sup> Gregory Koger, *Filibustering: A Political History of Obstruction in the House and Senate*, (Chicago IL: The University Of Chicago Press, 2010), 148.

<sup>12</sup> Binder & Mann, “Slaying The Dinosaur,” 43.

<sup>13</sup> Ibid. 44.

Republican filibuster over the conference report.<sup>14</sup> Republican senators in this case refused to vote for cloture because of partisan reasons, and the campaign reforms were never passed.<sup>15</sup>

Reform is necessary because senators have been willing to limit their right to filibuster if it fits their interests.<sup>16</sup> These limitations are known as “expedited procedures.” These “statutory debate limits” have included trade packages, certain government regulations, arms control, and foreign assistance.<sup>17</sup> It is important to note that implementing these “fast-track” procedures can be filibustered,<sup>18</sup> but it still shows how that the procedure has become more a political weapon than a protector of Senate tradition.

Much of the pro-reform literature follows the same direction and makes very similar arguments. The literature contends that the filibuster has become an overused political tool instead of promoting deliberation and study. The literature gives a detailed account of the political development of the filibuster and demonstrates that this has become a negative issue for the Senate. Readers can clearly see how the filibuster has dramatically changed the Senate, and that upholding certain “traditions” (even though senators may not if it meets their needs) is destroying the legitimacy of the institution. What makes this literature unique is that it proposes and examines different reforms. A good amount of academic literature tends to focus on the problems without giving any solutions. The pro-reformers do not make this mistake and give credibility to their position by discussing not one, but multiple reforms.

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid. 44-45.

<sup>18</sup> Ibid. 45.

### *Gaps In The Existing Literature*

Political Scientist Andrea Hatcher writes, “The Senate is understudied compared to the House.”<sup>19</sup> While the Senate as a whole may lack some literature, all sides of the filibuster debate are covered. This paper may be able to explain that the filibuster in its current form (recent 2013 reforms did not change its overall structure and integrity) may continue because the reforms of the 1970s had no impact on how it changed the Senate. Therefore, senators saw no reason to make sweeping reforms because by reducing the number of votes to invoke cloture, their view is that enough reform was passed.

The gaps in the pro-reform literature are less glaring. It provides a political development story, examples of legislation when the expedite process was used, and provides solutions. This paper may be able to shed more light on what the role of the filibuster reform in the 1970s had on how many times it was invoked. The basic question to answer is even though it became easier to invoke cloture, why did usage of the filibuster continue to rise? The argument that individualism and the use of holds increase is a good baseline. The pro-reform literature seems to blame individual senators for the current issue of gridlock. It would be interesting to investigate if the body as a whole, majority and minority is to be blamed.

This literature review did examined the basic arguments made by both sides, but one should not forget that there is a constitutional (and anti-constitutional for that matter) argument as well. These arguments include question regarding why the filibuster was not explicitly mentioned in the Constitution vs. the Constitution ensuring each chamber could establish its own rules.

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<sup>19</sup> Andrea C. Hatcher, *Majority Leadership In The U.S. Senate*, (Amherst, New York: Cambria Press, 2010), 10.

## *Conclusion*

As one can see, when it comes to the filibuster there is a strong divide between scholars who defend the filibuster as the last resort against majority will to those who want to reform and even abolish it. Abolishing the filibuster would ultimately change what the Senate is, a deliberative body that was created to slow down the demands from the masses. Any reform now would make the Senate just a mirror of the House. Those who support reforms also make a strong case, as the filibuster has made the Senate an unresponsive gridlocked body that only caters to those individuals who have the distinction of calling themselves a senator. The filibuster, while making an individual senator stronger, has weakened the institution as it does not protect the minority, it enhances it. Moving forward, it is important to examine the impact the reforms of the previous century. While it was argued that the reforms (including the creation of cloture) were meant to weaken the filibuster, based on the existing literature a compelling argument can be made that their effect was actually quite the opposite.

## **Evidence and Methods**

The filibuster is a unique procedure of the United States Senate. In order to fully understand the impact of the filibuster on Senate legislation, one must take into mind the type of analysis that should be conducted. This paper will examine how the different rules passed by the Senate impacted its usage by the Minority party. Different data sets will be used as well as primary sources that will measure the amount of cloture votes that were successful or not. This section will describe the different pieces of evidence that will be used as well as what methods of analysis were implemented.

### *Description of Evidence*

This paper will examine data that will display the amount of times cloture filings were recorded, when a cloture vote occurred, and if the cloture voted was successful. This data will inform my content analysis as it will shed light on the narrative of the case studies in this paper. There are three case studies in this paper. The first one will examine the filibuster after a 1917 rule that created cloture. The next case study examines how the rule change of a “two-track” filibuster system impacted how members used it. The last case study regards the 1975 rule change that established the cloture vote so that three-fifths and not two-thirds could end debate. The data set in itself will be a primary source; however more primary sources such as actual language of the rule change will be used throughout the paper.

### *Methods of Analysis*

The case studies mentioned above will be able to answer my hypothesis. This paper studies how the impact of different and new rules had on the filibuster. Consequently, this is a paper that examines change over time. These three case studies

are the major rule changes regarding the filibuster during the 20<sup>th</sup> century. Therefore, by examining how many times clotures were filed, when a cloture vote was taken, and if it was eventually successfully invoked, it will answer if these rules changes promoted or demoted the usage of the filibuster. Also, these case studies will explain the rise of the “invisible” filibuster and how one Senator can halt legislation and does not have to be on the floor to actually stop it from receiving a vote. These case studies cases should be able to answer that even though it has been easier to invoke cloture because it requires less senators to invoke it, why has the use of the filibuster increased over the last few decades?

This paper uses some terms that may be unfamiliar to the average observer of the legislative process. A filibuster is essentially a tactic that US senators use so that the overall body does not have a chance to vote. The filibuster is part of the deliberation process of the Senate; therefore a vote is required to end debate and have a final vote on the bill. A vote to end debate is known as a cloture vote. “Invoking” cloture means that the Senate has decided to end debate, which would then end a filibuster. Currently, it requires 60 senators to invoke cloture. Before 1975, the requirement was two-thirds, which in today’s Senate qualifies as 67. Another concept is typically known as the “invisible” filibuster which is a Senator holds a bill or nomination but does not physically need to be on the floor to delay a vote. Also the “two-track” system, which will be a case study of its own, was a procedure used in the early 1970s that allowed for more than one bill to be considered at a time. The filibuster, Senate rules, and the cloture are political concepts that will be operationalized in this paper. They are essential in determining how they have impacted the overall Senate and its traditions as being the “upper house.”

## *Conclusion*

As stated above this chapter will use a data set that will track the amount of times a cloture was filed, a cloture vote was taken, and whether it was actually invoked. This information will be available from the Library of Congress. Also, the data set will be primarily used as the main point of the analysis in three different case studies. These case studies deal are an examination of a “change over time.” The first case study is from 1917-early 1970s, which established cloture and two-thirds rule of invoking it. The second, will be from the early 1970s-1975, even though this is a short time frame it is important as the two-track system was developed and it was right before the new rule change of 1975. The third case study will examine the 1975 rule change that decreased the number required to invoke cloture to 60 (three-fifths). The study will impact the rule’s impact from the 1970s to the present day Senate.

## **Results and Analysis: Cloture & The Filibuster Pre-1917, 1917-1949**

Before discussing the creation of Rule XXII in 1917 that introduced the cloture vote that established a formal way to end a filibuster, it is important to briefly discuss the filibuster before the enactment of the cloture rule. Filibustering has not always been such a dynamic part of the overall Senate tradition. Sarah Binder and Steven Smith note that during the pre-Civil War Senate “only nine are on record for this period, six of which occurred between 1845-1860.”<sup>20</sup> The filibuster became more of an “issue” in terms of obstruction for the Senate in the 1880s.<sup>21</sup> Not only were more filibusters occurring in the latter part of the century, they were becoming more successful in obstructing legislation. Thirty-one percent of the filibusters between 1837 and 1879 were successful, while fifty-three percent of the filibusters were successful between 1880 and 1917, when Rule XXII was adopted.<sup>22</sup>

So why the shift? Throughout its early history the Senate was noted as having a limited workload and had a low visibility. It was regarded as being a “revisory body.”<sup>23</sup> After the Civil war this role changed. The workload increased as Senate was in sessions longer and Senators themselves introduced more legislation.<sup>24</sup> Also, one must consider the facilities of the US Senate during the 1800s. Before their current chamber opened in the 1859, few Senators saw any reason to obstruct to legislation due to terrible conditions in terms of internal temperatures and the air.<sup>25</sup> Even after the Senators moved to their current chambers, complaints existed about the air quality. This changed in the 1890s as

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<sup>20</sup> Sarah Binder and Steven Smith, *Politics Or Principle: Filibustering in the United States Senate* (Washington, DC: Brookings Institution Press, 1997), 60.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Binder and Smith, *Politics Or Principle*, 63.

<sup>24</sup> Ibid.

<sup>25</sup> Binder, 65-67



electricity provided for a better ventilation system.<sup>26</sup> This may have also contributed to the rise in the amount of filibusters.

With an increase workload, it was inevitable that more filibusters would occur because there was an increase in the amount of legislative activity. Also, with a better ventilation system, there was an incentive for Senators to attempt obstruction. The Senate was also becoming more highly visible. Senators were becoming more electoral minded as the century worn off. Instead of lobbying for the direct support of state legislators, Senators would canvass the individual legislators' constituents. The ratification of the seventeenth amendment in 1913 that allowed for the direct election of senators, confirmed the trend of electoral minded senators.<sup>27</sup> With the increase of electoral incentives and increase workload, the Senate abandoned its traditional role as an invisible chamber of gentlemen agreements (and disagreements) into a chamber that saw the benefits of obstruct in terms of partisan and electoral benefits. The Senate needed to reform itself in order to balance this wave of partisanship and visibility that accounted for more obstruction.

#### *Rule XXII*

It was becoming obvious that the Senate had to update its rule to combat the new levels of obstruction and filibustering. Rules limiting debate were considered by the Senate four times (1841, 1850, 1891, and 1893) before the adoption of Rule XXII.<sup>28</sup> These all failed, but in March of 1917, the Senate was finally able to adopt rules that would limit debate. President Woodrow Wilson initiated the plan. During World War I, many senators opposed any several measures that sought to militarize the country's

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<sup>26</sup> Binder and Smith, *Politics Or Principle*, 67.

<sup>27</sup> Binder and Smith, *Politics Or Principle*, 68.

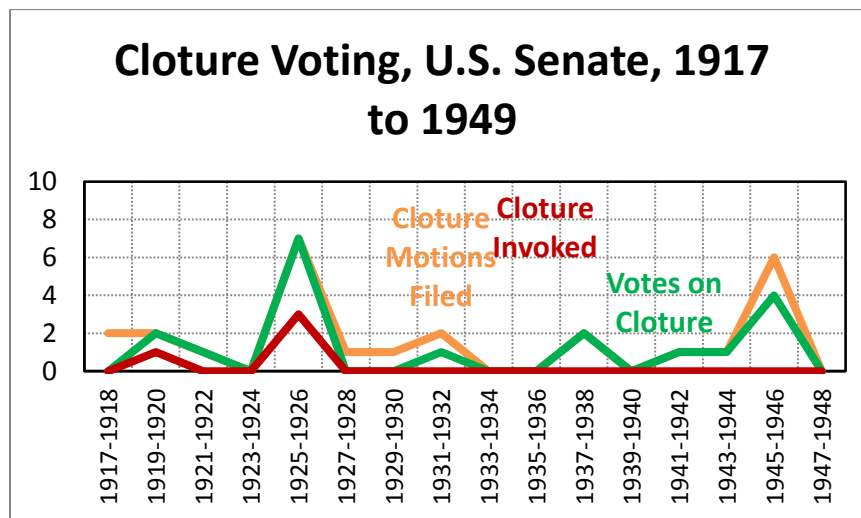
<sup>28</sup> Binder and Smith, *Politics Or Principle*, 74.

merchant fleet. Specifically it was inaction of the Armed Ship bill that forced Wilson to ask the Senate to change its rule on debate.<sup>29</sup> Wilson said, “The Senate has no rules by which debate can be limited or brought to an end, no rules by which debating motions of any kind can be prevented...The Senate of the U. S. is the only legislative body in the world which cannot act when its majority is ready for action...The only remedy is that the rules of the Senate shall be altered that it can act...”<sup>30</sup> The Senate adopted the first cloture rule in 1919 which stated that two-thirds of senators present could vote to end debate.

#### *Use of Cloture 1917-1949*

Now the Senate had a way to formally end filibustering and limit debate. With this formal rule, The following graph show that number of times cloture motions were filed, cloture votes taken, and if cloture was invoked (thus ending debate).

Figure 1



Source: U.S. Senate Historical Office

As one can see, during this time period, clotures were a weak procedural tool that did not limit the usage of the filibuster. First, clotures were barely ever filed. This had to with the

<sup>29</sup> Congressional Digest, *Legislative History Of The Cloture Rules In The US Senate*, (Washington DC: US Congress, 1926), 226.

<sup>30</sup> Ibid.

fact that sixty-seven of those senators present were required to invoking cloture. A senator (group of senators) would know that if their measure was going to be defeated, it served no purpose to even attempt ending a filibuster. Also, the original 1917 rule only stated that cloture applied to a “pending measure” (meaning legislation itself) before the Senate.<sup>31</sup> It became apparent that the Senate had to reform the rule in order to make it easier to break a filibuster.

### *1949 Reform*

As stated above, Rule XXII could only be applied to the vote on the measure itself. Senators could easily obstruct a piece of legislation by filibustering the motion to “proceed” on the legislation.<sup>32</sup> The cloture rule in its original format was just not strong enough for defeating filibusters. Rule XXII was expanded in 1949. Christopher Davis and Valerie Heitshusen note that “In 1949, the cloture rule was amended to apply to all ‘matters,’ as well as measures, a change that expanded its reach to nominations, most motions to proceed to consider measures, and other motions.”<sup>33</sup> The only exception was motions concerning rule changes. The procedure change also stated that cloture could be invoked if two-thirds of the entire Senate (not just those present and voting) voted in favor of it.<sup>34</sup> Senators now had the ability to limit debate at any stage of legislating, not just when the bill was under final consideration. This rule change effectively made it so that a super-majority vote was necessary to conduct all of the Senate’s business, but it did allow for the creation of using cloture in a more tactful way.

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<sup>31</sup> US Congress, Senate Committee On Rules And Administration, *Amending Rue XXII Relating To Cloture*, (Washington, DC 1947), 21.

<sup>32</sup> Ibid.

<sup>33</sup> Christopher Davis and Valerie Heitshusen, *Proposals to Change the Operation of Cloture in the Senate*, (Washington, DC: CRS, 2013), 1.

<sup>34</sup> US Congress, *Amending Rule XXII*, 21.

The 1949 rule change was a result about when during its consideration a bill could have cloture invoked. Civil rights was becoming more of a dominant issue in the post-World War II years. Gregory Wawro states, “By the late 1940s, it had become clear that civil rights legislation had become a particular target for filibusters, and thus cloture reform became closely entwined with civil rights reform.”<sup>35</sup> Indeed, the rule change was a compromise between civil rights and supporters and opponents, as the cloture rule’s extension to all motions was changed in exchange for having the threshold to consistent of every senator.<sup>36</sup> Civil rights would surely continue to be part of the struggle between conservative southern senators using the filibuster, and northern liberals attempting to strengthen the cloture rule.

#### **1949- 1970: Civil Rights: Cloture and Filibuster**

The 1949 reform was an indication that civil rights legislation was becoming an important part of the wider American discourse, and thus so the Senate debate. Even after the 1949 reform, Senators continued attempts to make it easier to invoke cloture. Wawro writes that “reformers focused on a different strategy for changing the cloture rule, seeking to take advantage of the unique context surrounding the opening of a new congress and use rulings from the chair to make it possible to change existing rules without invoking cloture.”<sup>37</sup> Many senators believed that they did not have to be bonded to rules established by their predecessors. In their view, the current rules were a hindrance to passing any civil rights legislation.

#### *1959 Reform*

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<sup>35</sup> Gregory Wawro, *The Filibuster and Filibuster Reform in the U.S. Senate, 1917–1975*, (Testimony, Senate Committee On Rules And Administration, April 22, 2010), 5.

<sup>36</sup> Gregory Wawro, *The Filibuster and Filibuster Reform*, 6.

<sup>37</sup> Ibid.

During the 1950s other attempts to reform the cloture rule occurred as well. The 1959 reform was the only successful attempt Majority Lyndon Johnson put forward. The plan “permitted cloture to apply to rules changes and lowered the threshold to two-thirds present and voting, while explicitly affirming in the rules the Senate’s status as a continuing body.”<sup>38</sup> The proposal was supported by members of both parties. Two factors were behind this rule change, Vice President Nixon and 1958 election. Nixon supported the Senate’s ability to have a majority write its own rules at the beginning of each Congress. Nixon wrote,

It is the opinion of the Chair that while the rules of the Senate have been continued from one Congress to another, the right of the current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress. Any provision of Senate Rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional.<sup>39</sup>

Although that reform was not adopted, it became clear that influential leaders supported the reformers’ attempts to make cloture easier to invoke. With Nixon’s support of some type of reform and with the 1958 election electing nine liberal senators who were in support of reform, it was inevitable that some change was going to occur.

Senator Johnson was able to persuade a number of Republicans and conservative Democrats that the reformers had the votes to push their own new cloture rule, thus giving them more power and increasing the potential for civil rights legislation.<sup>40</sup> The

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<sup>38</sup> Ibid.

<sup>39</sup> 103 Cong. Rec. 178 (1957).

<sup>40</sup> Binder and Smith, *Politics Or Principle*, 176.

1959 reform was a moderate compromise. The ultimate goal of these reformers was a majority cloture rule and they were far from complete from demanding their objectives. At this time cloture has never been invoked, and reformers were desperate to pass meaningful civil rights legislation that had failed throughout the 1950s. The 1958 election was a turning point in terms of when liberals saw an opening to defeat southern obstructionists that had plagued the chamber over the last decade.

#### *1964 Civil Rights Bill- Cloture Invoked*

While the 1964 Civil Rights Act was not the first successful bill to overcome a filibuster in decades (a 1962 communications bill holds that distinction of having cloture invoked for the first time since 1927),<sup>41</sup> it was by far the most important. Majority Leader Mike Mansfield was successful in bringing the bill for consideration by the chamber and it bypassed the Senate Judiciary Committee.<sup>42</sup> However, this was filibustered, but opponents allowed the motion to proceed as attention was turned to the bill itself, and a second filibuster was underway. In total, the filibuster lasted for 57 working days, 74 days total.<sup>43</sup> The motion to invoke cloture passed 71-29 and after unsuccessful attempts to send it back to committee, the final bill was passed 73-27.<sup>44</sup> Civil rights components were successful in overcoming the two-thirds rule by creating the necessary coalition that consisted of northern Democrats and Republicans.

#### *Use of Cloture 1949-1968*

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<sup>41</sup> Robert Loevy et al., *The Civil Rights Act Of 1964: The Passage of the Law That Ended Racial Segregation*, (Albany, NY: State University Press, 1997), 150.

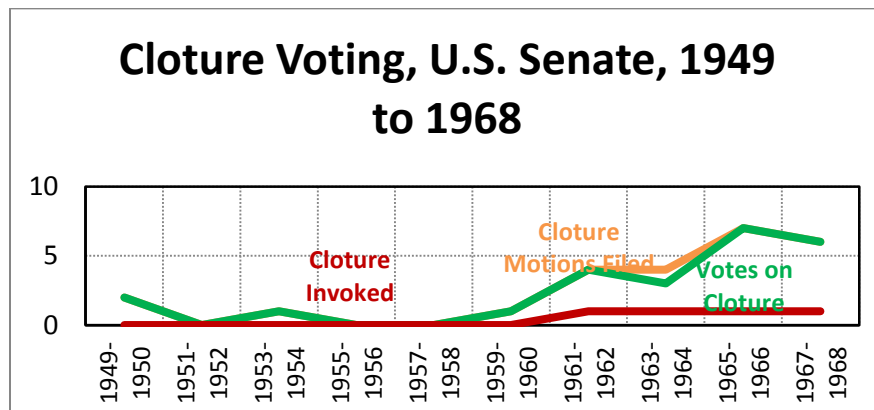
<sup>42</sup> Nicole Gueron, *An Idea Whose Time Has Come: A Comparative Procedural History of the Civil Rights Acts of 1960, 1964, and 1991*, (New Haven CT: Yale University Law Journal Vol 104, No. 5, March 1995), 1219.

<sup>43</sup> Gueron, *An Idea Whose Time Has Come*, 1219-1221.

<sup>44</sup> Gueron, *An Idea Whose Time Has Come*, 1221.

It is important to study the impact civil rights and the 1959 reform had on filibusters and obstruction. The following graph indicates clotures filed, voted on, and invoked during this time period:

Figure 2



Source: US Senate Historical Office

What is especially important about this graph as opposed to the previous one is that cloture was passed (for the first time since 1927). Also, Senate leaders started understand that having cloture votes that would fail could be used as strategic legislative maneuver. On popular legislation, senators can call out the objections of a faithful few, and highlight that they were on the wrong side of a particular issue. It was the hope that these individual senators would see that their filibuster was against the overwhelming will of the people, and would vote for cloture and not be as boastful about their opposition. These events planted the seeds for what we see today's legislative tactics concerning the filibuster and cloture. The two-thirds supermajority showed just how difficult it was to achieve important policy aims. It was indeed the impetus to do something about the sixty-seven vote obstacle.

### **1970s-2013: Two-Track System, the Silent Filibuster, and Changing the Threshold**

*Two-Track System and the Creation of the "Silent Filibuster"*

Reformers continued to push their agenda and but in 1967 and 1969, failed. The Senate leadership in the early 1970s finally believed that something had to be done with the filibuster in order to stop obstructionists. The Senate could not afford to be essentially halted in regards to one issue. The two-track system was proposed by Senate Majority Leader Mike Mansfield and Majority Whip Robert Byrd. Binder and Smith write, “Tracking allows the majority leaders-with unanimous consent or the agreement of the minority leaders- to have more than one bill pending on the floor as unfinished business.”<sup>45</sup> Before this system was adopted, the Senate could only act on one piece of legislation at a time. Therefore, the filibuster was very effective in killing a bill because eventually the chamber would decide to move on to other pressing issues.

The effect of this system may have inadvertently created more filibustering.<sup>46</sup> The costs of filibustering have decreased because Senators do not have to hold onto the floor in this model. This was the creation of what we now in the present day know as filibustering, where no speeches are necessary and that in effect are “silent filibusters.” Other scholars have stated that the two-track system was a symptom and not a cause of the increase in filibusters in the early 1970s. The Senate’s increase workload made the costs of having filibusters not worth it.<sup>47</sup>

It does seem however, that this two-track system is a direct correlation to the increase of the filibusters. Senators do not need to hold the floor anymore and after this system was adopted only have to inform their intent to filibuster. While the two-track system did not alter the traditions of the Senate in regards to unlimited debate, it did allow for the Senate to proceed with more than one issue at a time.

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<sup>45</sup> Binder and Smith, *Politics Or Principle*, 15.

<sup>46</sup> Ibid.

<sup>47</sup> Gregory Wawro, *The Filibuster and Filibuster Reform*, 9.

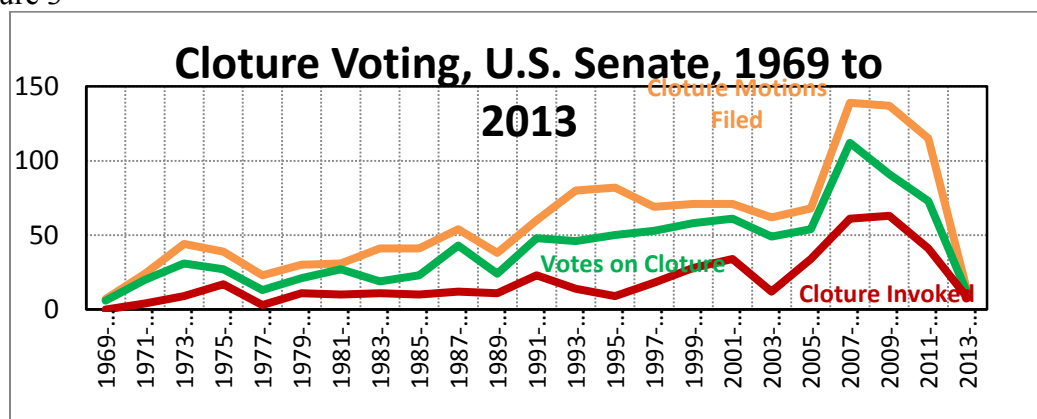


## 1975 Reform

Reformers finally had their breakthrough In 1975, after years of debating about how the Senate can changes its own rules in regards to invoking cloture. The 1975 cloture reform, like its predecessors, was a compromise. Wawro states, “a compromise was reached that would require three-fifths of the chamber to invoke cloture, rather than three-fifths of those present and voting as was originally proposed.”<sup>48</sup> However, a two-thirds vote of the chamber would be necessary to invoke cloture in terms of changing the rules. This was the first time the threshold level to invoke cloture was decreased.

One would assume that lowering the threshold would decrease filibusters because it would be easier to invoke cloture. However, this is not the case. Since the 1970s, the use of cloture has generally been more acceptable, because it is easier to attempt to invoke due to the lower threshold. Gregory Koger writes that the lower threshold “may have increased filibustering, although we might also attribute that increase to the broader acceptance of cloture as a normal and preferred response to obstruction.”<sup>49</sup> The chat below indicates impact of the 1975 reform has on clotures:

Figure 3



Source: US Senate Historical Office

<sup>48</sup> Gregory Wawro, *The Filibuster and Filibuster Reform*, 7.

<sup>49</sup> Gregory Koger, *Filibustering*, 135.

Unlike the previous graph indicating cloture activity, the early 1970s- modern times show a significant amount of activity. This is an indication that senators have realized that the cloture can be a powerful political weapon in strategic terms.

The graph also indicates that the cloture threshold had little to no impact on making it easier to invoke cloture. Surprisingly, twenty years after the 1975 reform, successful clotures stayed relatively constants. Even though there was an increase in the amount of cloture votes and filings. Coalition building should have been easier with fewer senators necessary to end filibusters. It can be argued however that coalition building was difficult before the 1975 reform to begin with, and seven senators may not be a major difference as the Senate was becoming an increasing polarized and partisan institution over the last half-century.

#### *Post-1975 Minor Reforms*

Since 1975 there have been minor reforms to Rule XXII. These reforms did not significantly alter how cloture is invoked. The first minor reform occurred in 1976. According to Christopher Davis and Valerie Heitshusen a change was “made in 1976, amendments filed by Senators after cloture was invoked were no longer required to be read aloud in the chamber if they were available at least 24 hours in advance.”<sup>50</sup> It became apparent that senators would try to attempt to delay a bill by offering several motions and amendments after cloture was invoked. So in “In 1979, Senators added an overall “consideration cap” to Rule XXII to prevent so-called postcloture filibusters,”<sup>51</sup> the cap was set to 100 hours. In 1986 this cap was reduced to 30 hours.<sup>52</sup>

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<sup>50</sup> Davis and Heitshusen, *Proposals to Change*, 2.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

A minor reform was passed in January 2013. The reforms focused on how the motion to proceed is changed and nomination process of Sub-Cabinet and Federal (but not Supreme Court) nominations handled. Ezra Klein explains, that the reform does not necessarily change the filibuster's effect on the motion to proceed,

The deal Reid struck with McConnell doesn't end the filibuster against the motion to proceed. Rather, it creates two new pathways for moving to a new bill. In one, the majority leader can, with the agreement of the minority leader and seven senators from each party, sidestep the filibuster when moving to a new bill. In the other, the majority leader can short-circuit the filibuster against moving to a new bill so long as he allows the minority party to offer two germane amendments. Note that in all cases, the minority can still filibuster the bill itself.<sup>53</sup>

The reform also only permits a senator to filibuster a conference report once not three times. Also, the 2013 reform limits post cloture debate to two hours on district court nominees.<sup>54</sup>

These reforms are very minor and do not change the overall structure, function, and purpose of the filibuster. In November 2013, a major reform occurred. Senator Reid pushed through a rule change that would require only 51 votes to invoke cloture on a President's cabinet and judicial nominations. This was previously known as the "nuclear option."<sup>55</sup> The 2013 reforms have made the filibuster a public political issue. Once argued by intuitionists and academics, it is now a mainstream political issue. These proposals and others will be discussed later in this paper.

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<sup>53</sup> Ezra Klein, Harry Reid: *I'm Not Personally, At This Stage, Ready to Get Rid of the 60-Vote Threshold*, (Washington Post, January 21, 2013).

<sup>54</sup> David Weigel, *Final Filibuster Reform Deal Largely Based on John McCain and Carl Levin's Proposals*, (Slate, January, 24, 2013).

<sup>55</sup> Paul Kane, Reid, *Democrats Trigger 'Nuclear' Option; Eliminate Most Filibusters On Nominees*, (Washington Post, November 21, 2013).

## *Conclusions*

Indeed, as one can see, cloture rules have had a profound impact on the historical development of the Senate over the last century. The Senate has transformed considerably into a chamber where partisan victories outweigh policy concerns. This can certainly be attributed to efforts to stop unlimited debate. The chamber was once seen as a place where gentlemanly disagreements existed, but respect was still intact.

The filibuster was seen as an instrument to grant respect to fellow colleagues and to allow him /her to have his say. The last few decades of the twentieth century changed this gentlemanly respectful approach as the Senate was dealt with more complex legislation. Since this gentlemanly respect disappeared, the invention of the cloture was necessary for the good of the chamber. The filibuster still existed, and we see a partisan chamber that stemming from the harsh civil rights debates of the 1950 and 60s. More institutional changes in the 1970s made the costs of filibustering decline. The lowering of the threshold to 1975 had no impact on making it easier to invoke cloture, because of these costs declining. The two-track system may have made the Senate be able to focus on other issue while one particular policy proposal is being filibustered, but it allowed for the proliferation of more filibusters which has contributed greatly to the current gridlock we observe.

### **Recommendation & Conclusion**

As one can see, the cloture rule has been changed several times of the last century. These reforms were motivated by historical circumstances. Cloture was not much a controversial issue before the civil rights era. Since it was uncontroversial, reforms were not necessary. This all came to head during the 1950s. It should be noted that filibuster reform was just one of the many components liberal members sought to change in both chambers. Committee structure, particularly the power of the committee

chair, was a major target of reform as well. Perhaps if these members would have solely focus on strengthening the filibuster, the majoritarian cloture may have had a chance to succeed. However, their attempts to change the filibuster gave root to the 1970s reforms that impact the Senate today.

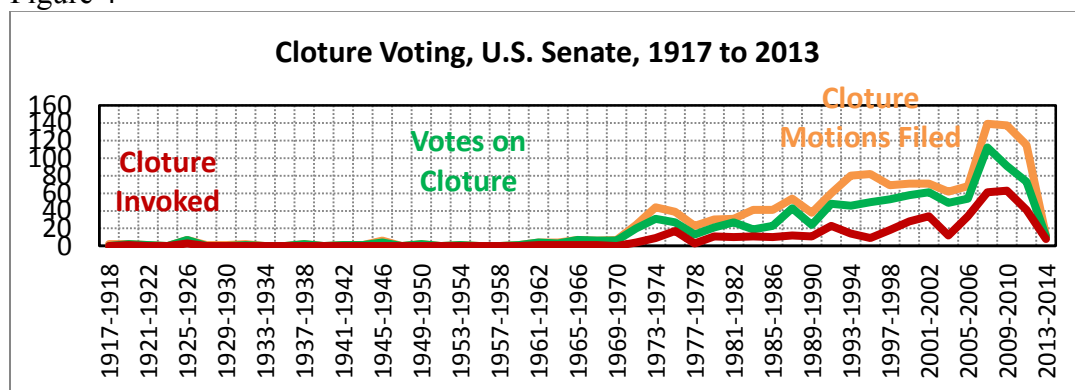
#### *Did the 1970s reforms work?*

This paper hypothesized that with a lower threshold of senators, it would be easier to invoke cloture. Unfortunately this hypothesis is incorrect. Filibusters are still very common, and the use of the threat of a cloture does not stop them from occurring. Why? This paper has shown that the explosion of the silent filibuster from the two-track system has made it easier to filibuster; in fact a filibuster only has to be threatened. The costs are lower; senators do not need to spend time on the floor. Also, due to unanimous consent rules, secret holds have attributed to the current gridlock as well. With an increase of partisanship, reduced costs to filibuster, and secret holds, the cloture rule in its current form is weak in terms of its impact on ending gridlock. Something must be changed.

#### *Alternatives to the Current Rule*

Before discussing other alternatives to the current cloture rule, it is interesting to note the usage of cloture over the last century, especially the last few years:

Figure 4



Source: US Senate Historical Office

Table 1

| <b>Senate Action on Cloture Motions</b> |              |                      |                         |                        |
|---|--------------|----------------------|-------------------------|------------------------|
| <b>Congress</b>                         | <b>Years</b> | <b>Motions Filed</b> | <b>Votes on Cloture</b> | <b>Cloture Invoked</b> |
| <b>114</b>                              | 2015-2016    | 17                   | 18                      | 5                      |
| <b>113</b>                              | 2013-2014    | 253                  | 218                     | 187                    |
| <b>112</b>                              | 2011-2012    | 115                  | 73                      | 41                     |
| <b>111</b>                              | 2009-2010    | 137                  | 91                      | 63                     |
| <b>110</b>                              | 2007-2008    | 139                  | 112                     | 61                     |
| <b>109</b>                              | 2005-2006    | 68                   | 54                      | 34                     |
| <b>108</b>                              | 2003-2004    | 62                   | 49                      | 12                     |
| <b>107</b>                              | 2001-2002    | 71                   | 61                      | 34                     |
| <b>106</b>                              | 1999-2000    | 71                   | 58                      | 28                     |
| <b>105</b>                              | 1997-1998    | 69                   | 53                      | 18                     |
| <b>104</b>                              | 1995-1996    | 82                   | 50                      | 9                      |
| <b>103</b>                              | 1993-1994    | 80                   | 46                      | 14                     |
| <b>102</b>                              | 1991-1992    | 60                   | 48                      | 23                     |
| <b>101</b>                              | 1989-1990    | 38                   | 24                      | 11                     |
| <b>100</b>                              | 1987-1988    | 54                   | 43                      | 12                     |
| <b>99</b>                               | 1985-1986    | 41                   | 23                      | 10                     |
| <b>98</b>                               | 1983-1984    | 41                   | 19                      | 11                     |
| <b>97</b>                               | 1981-1982    | 31                   | 27                      | 10                     |
| <b>96</b>                               | 1979-1980    | 30                   | 21                      | 11                     |
| <b>95</b>                               | 1977-1978    | 23                   | 13                      | 3                      |
| <b>94</b>                               | 1975-1976    | 39                   | 27                      | 17                     |
| <b>93</b>                               | 1973-1974    | 44                   | 31                      | 9                      |
| <b>92</b>                               | 1971-1972    | 24                   | 20                      | 4                      |
| <b>91</b>                               | 1969-1970    | 7                    | 6                       | 0                      |
| <b>90</b>                               | 1967-1968    | 6                    | 6                       | 1                      |
| <b>89</b>                               | 1965-1966    | 7                    | 7                       | 1                      |
| <b>88</b>                               | 1963-1964    | 4                    | 3                       | 1                      |

| <b>Senate Action on Cloture Motions</b> |              |                      |                         |                        |
|---|--------------|----------------------|-------------------------|------------------------|
| <b>Congress</b>                         | <b>Years</b> | <b>Motions Filed</b> | <b>Votes on Cloture</b> | <b>Cloture Invoked</b> |
| <b>87</b>                               | 1961-1962    | 4                    | 4                       | 1                      |
| <b>86</b>                               | 1959-1960    | 1                    | 1                       | 0                      |
| <b>85</b>                               | 1957-1958    | 0                    | 0                       | 0                      |
| <b>84</b>                               | 1955-1956    | 0                    | 0                       | 0                      |
| <b>83</b>                               | 1953-1954    | 1                    | 1                       | 0                      |
| <b>82</b>                               | 1951-1952    | 0                    | 0                       | 0                      |
| <b>81</b>                               | 1949-1950    | 2                    | 2                       | 0                      |
| <b>80</b>                               | 1947-1948    | 0                    | 0                       | 0                      |
| <b>79</b>                               | 1945-1946    | 6                    | 4                       | 0                      |
| <b>78</b>                               | 1943-1944    | 1                    | 1                       | 0                      |
| <b>77</b>                               | 1941-1942    | 1                    | 1                       | 0                      |
| <b>76</b>                               | 1939-1940    | 0                    | 0                       | 0                      |
| <b>75</b>                               | 1937-1938    | 2                    | 2                       | 0                      |
| <b>74</b>                               | 1935-1936    | 0                    | 0                       | 0                      |
| <b>73</b>                               | 1933-1934    | 0                    | 0                       | 0                      |
| <b>72</b>                               | 1931-1932    | 2                    | 1                       | 0                      |
| <b>71</b>                               | 1929-1930    | 1                    | 0                       | 0                      |
| <b>70</b>                               | 1927-1928    | 1                    | 0                       | 0                      |
| <b>69</b>                               | 1925-1926    | 7                    | 7                       | 3                      |
| <b>68</b>                               | 1923-1924    | 0                    | 0                       | 0                      |
| <b>67</b>                               | 1921-1922    | 1                    | 1                       | 0                      |
| <b>66</b>                               | 1919-1920    | 2                    | 2                       | 1                      |
| <b>65</b>                               | 1917-1918    | 2                    | 0                       | 0                      |
| <b>Total</b>                            |              | <b>1647</b>          | <b>1228</b>             | <b>635</b>             |

Source: U.S Senate Historical Office

Obviously, the spike in cloture motions filed over the last few years is an indication that the filibuster is still wreaking havoc on the chamber. So what can be done? The 2013



reform was very minor and does not strengthen the cloture rule. Other alternatives should be considered. Table 1 also indicates that the issue of obstruction has only gotten worst. Also, table 1 indicates that cloture motions were increasing before the 1975 reform and is a reason why the chamber decided to implement changes. The issue of obstruction has not improved, but has become much worst. This table is proof that the status quo in the Senate is not sustainable.

One alternative would be to lower the cloture threshold down to 55 senators. Fifty-five senators is an appropriate number to some as it still respects minority rights, but in the end allows for the majority to pass legislation easier than today's threshold of sixty. However, as this paper has proven, lowering the threshold does not necessarily make it easier to invoke cloture. Although, 55 senators is obviously easier to achieve than 60, and you may not even need to build a coalition to achieve. The 55 senator rule would really make Senate elections important. As of now majority status is nothing more than bragging rights. Perhaps a 55 vote threshold would change that perception. Another alternative would be to reduce the amount of votes necessary to invoke cloture as time passes on. This approach is seen as more of a moderate version of the 55 vote threshold.

The threshold number does not really go at the root of the problem, which is the silent filibuster. Many argue that true filibuster reform would be ending secret holds and silent filibusters, a senator must hold the floor to keep a bill from having a final vote. The costs of filibustering would increase significantly, especially in the modern Senate where senators are focused on committee work, constituents, and fundraising. Not only would the characteristics of the modern Senate make this reform difficult to achieve, the advent of C-SPAN has made senators cautious about their behavior on the Senate floor. Senators

would not want to be seen as obstructionists or extreme at home, and would be hesitant to filibuster on the floor. While this attitude would reduce filibustering, it does not provide the incentive to pass such a reform. The alternative to this rationale is that senators may relish the spotlight and would further exacerbate the hyper-partisanship in the Senate today.

### *Correlation Between Amending Cloture Rules And Reduction of Filibusters*

Common sense would state that the easier it is for the Senate to end debate by invoking cloture would mean that a reduction of filibusters would occur. This has not been the case. Indeed, the individual nature of the Senate is to blame for this logical occurrence from happening. This is a major tension that the Senate faces: a legislative body where individuals reign supreme while they collectively make up a major part of the policymaking process. Reforms mentioned in this chapter have not been able to solve this tension. The recommendation below may be able to finally fix this inherent problem of individual prerogative vs. policy-producing legislative body.

### *Recommendations*

This paper has concluded that attempts to strengthen the cloture rule have failed. Whether lowering the threshold or when cloture could be invoked during the legislative process, obstruction has won. It is recommended that in the spirit of the civil rights era reformers, that the cloture rule should be invoked by majority vote. Budgetary items (a reform in the 1970s) have this same rule, it should be applied to all legislation. The Senate is not a “special” chamber anymore. Since the enactment of the seventeenth amendment, we now directly elect our senators. They are by the same virtue, representatives like our local congressmen. They are not different from other elected

official that are predisposed to majority will. As such our individual senators are not predisposed to this will, so should the Senate chamber and its rule. It will probably be impossible for this reform to ever pass, since the Senate changes parties from time to time. The majority party knows that it will eventually be a minority, so the prospect of not having a way to obstruct does not sound appealing.

Whether change comes from the Supreme Court or from within, the filibuster has been a grave threat to our democracy. The minority should not be able to dictate policy. It should not be the burden of the majority to invoke cloture, but it should be placed on the minority to continue a filibuster (an argument Senator Reid has made). The minority has several opportunities to offer their input in the legislative process, especially during the mark-up period. The only way to ensure that obstruction ends is to invoke cloture by majority rule. It is wrong to think that the minority would not be heard if cloture is invoked by majority vote. There would still be time allotted for debate and amendments could still be filed.

This is not a recommendation to completely eliminate the filibuster- but to significantly reform it and make it easier to invoke cloture by majority vote. The burden must be on the minority, and therefore a senator should not have the power to hold a piece of legislation on the floor without being present. A senator can still have the power to delay legislation, but he/she must be on the floor of the senate in their attempt to obstruct a bill. This recommendation essentially uses the examples of the infamous Senator Byrd and Senator Thurmond as well as the performance of the actor James Stewart in *Mr. Smith Goes to Washington*. By being present, this approach to filibustering aligned with the traditions of the Senate and the original intent of procedure.

The minority is granted its right to be heard yet the majority has its right to pass legislation.

Elections have consequences. If the minority is not happy with its current status, than it should change its approach to policies and appeal to more voters. Real policy gains come from within the electoral process, not with a small coalition of senators compromising on a water-down version of a policy item in order to achieve sixty votes. The rationale that the Senate is a body where small-states can defend themselves from the threat of big-states is outdated. The current model is now Democrat vs. Republican. In the end, the people elect the majority, therefore it should be expected that the majority be able to implement the people's wishes. It is time for the Senate to update its own procedures for the good of the country. It is time to fulfill the basis of the cloture rule: to end debate and have a final vote on a piece of legislation.

## **Chapter Three: Committees in the United States Senate- Impeding in the Policymaking Process?**

### **Introduction**

Passing legislation through the United States Congress has never been easy. The process in general is not supposed to be simple. Our system was created with certain checks and balances that with proper deliberation, solid public policy would be produced. Unfortunately, over the last couple of decades we have seen gridlock become the norm. Several factors may be at play, including external pressures such as voters and the media, but one must look at the institution itself. The committee system of the U.S. Congress is a key to unlocking why conflict is occurring. Particularly when an issue that is not so easily defined between committee that would have jurisdiction. Committee jurisdiction issues also known as “turf war” have been studied in the House; the Senate has not received the same amount of scrutiny. Like the previous chapter it seeks to fill a void in the literature.

“Turf war” has fascinated generations of congressional scholars. It demands an examination of both the institution as well as the behavior of the individuals. It is also an important topic in public policy. How jurisdiction is determined can ultimately impact the policy implications of a particular bill. The bill could vastly be different from the beginning of the committee process (the referral) the end (committee report). In reality, jurisdictional conflict could also mean the premature ending of a promising piece of legislation. This is usually the case, as often times the hard headedness of a committee chair may get in the way of producing quality policy by means of deliberation. The question of whether it is worth fighting which more likely means dooming the bill is still something members of congress face on a consistent basis.

In an ever increasing polarized congress, the spotlight on jurisdictional conflict will be shine brightly. On its surface, it is easy to attack as members of congress being whiny and non-deliberative. One can also view the issue as being deliberative in nature, allowing more people earlier on the policymaking process to provide input, which in the end improves a piece of legislation. Sometimes both cases are true and sometimes both are false. It usually depends on the particular issue, the personality of the committee chairs, the strong armed will of the leadership, external pressures of the voters, what the President may do, how staff members from committees and the Parliamentarian's office work with each other.

As stated above, jurisdictional conflict is both an institutional and behavior concern. Usually the two are separate problems that would have separate solutions. However, the institution allows for more than one committee to take on a particular piece of legislation, therefore, the behavior of the actors involved in irrelevant. Having more than one committee considering an issue does provide the opportunity for it to become more comprehensive, therefore viewed as "better." However, what has occurred is that it promotes just one more roadblock in the ever-more difficult of passing legislation.

The purpose of this chapter is to answer whether jurisdiction conflict does in fact impede the legislative process. Is the Senate more or less like the House in this regard? Also, what roles do the Majority Leader, committee chairman, and individual Senators have in jurisdictional conflicts? By reviewing the work on others, this paper will examine the use of multiple referrals, individual case studies, and take a behavioral aspect by studying the actors. It will also provide recommendations (if any) that could improve this aspect policymaking process in the Senate.

The hypothesis to the question raised is that no, overall jurisdiction conflict does not impede legislation in the Senate. This is because the Senate is vastly different than the House and therefore the committee structure overall is not as powerful. The House is more power centered, while the Senate the power is more disbursed. This could be an important difference between the two chambers in regards to this issue. Also, the Senate is a place where precedence and deference rules the day. Yes, standing rules do exist, but they are not formal and have been formed out of precedence. Due to the nuisance described above, the actors of the Senate- the Senate Parliamentarian, Majority Leader, Committee Chairman, and the individual Senator all do play a role. It will be interesting to note whether one of these actors has more of an impact than the other.

## **Literature Review**

### *Introduction*

Previous literature on the committee jurisdiction in the Senate is not numerous. Congressional scholars, for the most part, have concentrated their efforts on jurisdiction issues in the House. This is predominant throughout congressional scholarship. However, while differences do between the two chambers do exist; literature on the House is still informative about how jurisdictional difference impact the policymaking process. Yes, there is literature about committee jurisdiction in the Senate, but it is lacking compared to the House. The issue of committee jurisdiction is relevant in both chambers, and therefore lessons can be drawn from both sides.

There are two overarching themes when it comes to committee jurisdiction. One is that jurisdiction issues create an atmosphere of hostilities; therefore “turf wars”<sup>56</sup> between competing committees are created and the policymaking process is adversely impacted. The majority of literature takes this point of view. However, there is a counter point in which committee jurisdiction is a net-positive for the policymaking process as it encourages deliberation and corroboration. This point is not as widely argued, but it does provide for a different perspective that committee jurisdictions battles impede the policymaking process. Also, the issue of committee jurisdiction is more prevalent in the House than the Senate. Regardless, there is a general consensus that the jurisdiction issue is an important component of policy development.

### *Common Law Jurisdiction & Referral*

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<sup>56</sup> David King, “Turf Wars: How Congressional Committees Claim Jurisdiction,” (Chicago IL: University of Chicago Press, 1997).



As mentioned above there is a general belief that committee jurisdiction issues create a form competition between committees, which impedes the policymaking process. However, it is not exactly that clear cut. Committee jurisdiction can be viewed as both, “rigid and fluid.”<sup>57</sup> Rigid forms of jurisdiction are based on statutory law. This form is written and generally accepted and both chambers have agreed upon established rules.<sup>58</sup> Where tension occurs or, also known as a “turf war” is due to jurisdiction based on common law.<sup>59</sup> This is where jurisdictional claims become more fluid. Common law is when the notorious referral process is used, “common law jurisdictions, on the other hand, are granted whenever jurisdictionally ambiguous bills are referred to committees.”<sup>60</sup> These types of bills have to be referred to a particular committee, which is when the potential for a “turf war” (or cooperation according to some scholars) begins.

#### *Bill Referral- Multiple Referrals & Confrontation*

The referral of bills to different committee is an important element of the policymaking process. Specifically, a referral to more than one committee is where confrontation can occur. This is known as “multiple referrals.”<sup>61</sup> Since 1995, the Speaker has designated one primary committee as the referred committed but can by his/her discretion add committees in the process.<sup>62</sup> The House Parliamentarian has stated that essentially these additional committees are just additional initial referrals.<sup>63</sup> It can be argued that having multiple committees give input to complex pieces of legislation

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<sup>57</sup> King, *Turf War*, 33.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> David King, *Turf War*, 7.

<sup>61</sup> Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*, (Washington DC: CQ Press, 2007), 44.

<sup>62</sup> Walter Oleszek, *Congressional Procedures and the Policy Process*, (Washington DC: CQ Press, 2007), 88.

<sup>63</sup> Walter Oleszek, *Congressional Procedures*, 88.

throughout the process is positive; it has serious negative consequences as well. With more committees added to the process, the opportunity for delay and negotiation can occur.<sup>64</sup> This has also increased the power of the Speaker as he/she may at times have to become involved in the process to and mediate turf war issues.<sup>65</sup> Indeed, on the surface it would appear that multiple committees having input on a piece of legislation enhances committees overall, however, if they cannot cooperate they ultimately cede power to the Speaker.

#### *Multiple Referrals & Cooperation*

Yes jurisdictional issues will continue to be a cause of frustration during the policymaking process. However, this does not necessarily mean that multiple referrals are always a cause of concern. It is a standard part of the process that those in the House have come to accept, “For all the frustrations they bring, House members have come to rely on multiple referrals and to accept that much legislating requires coordination and bargaining among committees.”<sup>66</sup> Also there is the belief that multiple referrals provide “a cross-fertilization of ideas.”<sup>67</sup> Indeed, the problem of gridlock may just be overstated. The “Transaction Cost Theory of Committees” states that “the less costly it is for committees to measure the political and policy assets at stake and to enforce their agreement, the more likely they are to avert the turf war.”<sup>68</sup> The policymaking process is never a one size fits all endeavor. Indeed, depending on the piece of legislation, committees will balance the transaction costs. In the end, it may be beneficial for both

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<sup>64</sup> Walter Oleszek, *Congressional Procedures*, 89.

<sup>65</sup> Ibid.

<sup>66</sup> John Baughman, *Common Ground: Committee Politics in the U.S. House of Representatives*, (Stanford CA: Stanford University Press, 2006), 188.

<sup>67</sup> Ibid.

<sup>68</sup> John Baughman, *Common Ground*, 31-32.

committees to corporate not for the sake of passing legislation, but that their input is in the final version of a bill.

*Committee Jurisdiction In The Senate, Why Is It Different?*

In the House, leadership takes an active role in the determination of multiple referrals. However, in the Senate, the leadership rarely takes such a role.<sup>69</sup> This may be due to Senators would not give that type of power to the Majority leader of the Senate as House members give to the Speaker.<sup>70</sup> A major reason that the issue of committee jurisdiction is not as much of an issue in the Senate is that the reforms of the late 1970s have generally been considered a success.<sup>71</sup> These reforms realigned committee jurisdiction making it more modern to fit the needs of complex legislation.<sup>72</sup> In the Senate, committees do not play such a vital role in the policymaking process as it does in the House.<sup>73</sup> A stark contrast between the House and Senate is explained below:

Multiple referral of legislation has always been possible in the Senate through unanimous consent. The Senate, however, did manage to realign its committee jurisdictions during the 1970s, and because senators can more easily influence legislation outside the committee setting than House members can, they have less incentive to resist on a referral...As a consequence, the referral of legislation to more than one committee continues to be much less frequent in the Senate.<sup>74</sup>

The House reforms of the 1970s were not as effective in dealing with the issue of multiple referrals.

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<sup>69</sup> Barbara Sinclair, *Unorthodox Lawmaking*, 44-45.

<sup>70</sup> Barbara Sinclair, *Unorthodox Lawmaking*, 44.

<sup>71</sup> Barbara Sinclair, *Unorthodox Lawmaking*, 116.

<sup>72</sup> Barbara Sinclair, *Unorthodox Lawmaking*, 118

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

While multiple are less frequent in the Senate, the issue of confrontation still does occur it is just not as evident in the House. This is the case for major measures of legislation,

Yet, a key difference between the House and Senate is that the Senate relies on less formal rules. This is clearly demonstrated in the in the Senate committee process. This is explained below:

Major measures are more likely than ordinary bills to be sent to more than one committee but even on important and controversial bills, formal multiple referral is more less frequent in the Senate than in the House. In keeping with Senate's tendency toward less formal procedures, several committees sometimes consider different bills on the same topic. This can create complications much like those that stem from formal multiple referral.<sup>75</sup>

The Senate's lack of formal rules and the influence an individual Senator has on the policymaking process are key indicators that overall committee jurisdiction is not a hamper to the process as it is in the House.

### *Conclusion*

Committee jurisdiction is a key component of the policymaking process. The issue of turf war, where more than one committee fights over its jurisdictional authority over a policy proposal, usually creates gridlock. Bill referrals are a key component of turf wars, as the House and the Senate have different methods. The House has a more formal process, while the Senate based on tradition, and has a non-formal policy. This is due to the fact that in the Senate tradition is usually the way how business is conducted and that Senators on an individual basis have more of an impact on the policymaking process. The House Speaker and by extension the parliamentarian have more of a role to play in this

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<sup>75</sup> Ibid.

part of the process. In the Senate the Majority Leader and Parliamentarian do not. Committee jurisdiction issues may be more pronounced in the House, but it is still part of the process in the Senate that deserves further examination.

## **Evidence and Methods**

Researching jurisdictional issues in the Senate is has its complications. However, this paper will examine not just the process itself, but also different policies from the past that have been impacted by the jurisdictional question. This paper will use primary documentation from the Senate, news article that may shed light on the policy process, and information passed from the staff of the Congressional Research Services (CRS). These will give a clear picture on how jurisdictional issues arise in the Senate, how the actors react, and what (if any) solution is produced.

### *Description Of Evidence*

This paper will examine data on three different fronts. First, the formal written rules of the Senate will be examined. This includes the Rules of the Senate and *Riddick's Senate Procedure*, which serves as a source and guideline for procedure in the Senate. Second, the data will focus on examples of bills where jurisdictional issues arose. These bills will serve as case studies. The second set of data is an examination of the actors themselves. This would include Senators as individuals, committee chairmen, and party leadership, as well as the Senate Parliamentarian's office.

### *Methods of Analysis*

The formal rules, case studies, and behavior analysis mentioned above will be able to answer my hypothesis. When reading the rules and *Riddick's* it will be important to fundamentally question whether or not the Senate is an institution that emphasizes non-formal rules. The late 1970s reforms will also be taken into account. As previous literature reiterates the point that the Senate is where non-formality prevails, it is important to formally understand where formal procedure has an impact.

As mentioned above, compared to the House, there are not as many instances where committee jurisdiction issues were a problem. This may be true, however, it does exist- particularly when it a bill of high significance. These bills will serve as case studies and provide a crucial insight into the policymaking process. Some questions to bear in mind include what are the types of issues which require make multiple referrals or multiple committees to debate the same issue? This could range from Commerce to Healthcare, but are there any examples where mundane bills would create such an issue? News articles and information from CRS will highlight which bills created jurisdictional battles.

Finally, one cannot give an analysis on the policymaking process without taking into account the behaviors of the actors. This paper will examine how Senators' have an overall impact on jurisdiction. One should focus on role of the individual Senator and how the power he/she possesses in a chamber of 100. Does the individual Senator have too much power? Committee chairman and the leadership also play a role too. Does the party leadership have too little power and the chairman has too much? The Senate parliamentarian's office also is part of the process as well. This office may be overlooked and especially in terms of jurisdiction may have the potential to play a significant role. At the very least, it is worthy to include the office in order to understand how it in the overall process. News articles, CRS materials, and formal rules will inform how the behavior of Senators impacts jurisdictional issues.

### *Conclusion*

As stated above this paper will use data from a multitude of sources and includes a rationale of different reasons. The evidence includes formal rules and documents from

the Senate, news articles, and CRS information and materials. There will be three different methods in how to study jurisdiction in the Senate. First, the role of formal rules; Second, particular bills that will serve as case studies; and Third, examining the behavior of individual actors involved in the process. With the evidence and analysis described above, one should fully understand the jurisdiction in the Senate, why it is important, and what its impact on the overall policymaking process.



## **Results and Analysis: Jurisdiction and the U.S. Senate**

### *Formal Rules, Procedures, and Precedents*

#### Senate Rule XXV

While the House of Representatives may be more known as the chamber where rules and not tradition dictate the terms of procedure, the Senate does have its own rules. This document is published by the Senate Committee on Rules and Administration. For the purpose of committee jurisdiction, Senate Rule XXV lays out the general procedure:

Senate Rule XXV establishes standing committees, determines their membership and fixes their jurisdictions. Setting jurisdictional boundaries among committees has always proved troublesome. While some jurisdictions apply to oversight of specific executive agencies or precisely defined functions, others are not so obviously described. As a result, a half-dozen or more committees may claim jurisdiction in such broad policy areas as the national economy or environmental protection. While Senate Rule XXV also provides for select, special, and joint committees, it does not spell out their responsibilities. These are detailed in the Senate resolutions that established – or updated – the authority of these special panel.<sup>76</sup>

It is interesting to note that the Senate itself describes the boundaries of jurisdiction as troublesome and that such jurisdictional issues occur when there are broad policy areas being debated. The Senate also publishes the “Authority and Rules of Senate Committees,” which is agreed upon at the beginning a new congress. It is a compilation of Rule XXV as it spells out the jurisdictional boundaries of the Senate’s standing committees. An example below from the Committee on Energy and Natural Resources shows that Rule XXV can be thorough:

1. Coal production, distribution, and utilization. 2. Energy policy. 3. Energy regulation and conservation. 4. Energy

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<sup>76</sup> United States Senate, *Senate Committees*.

related aspects of deepwater ports. 5. Energy research and development. 6. Extraction of minerals from oceans and Outer Continental Shelf lands. 7. Hydroelectric power, irrigation, and reclamation. 8. Mining education and research. 9. Mining, mineral lands, mining claims, and mineral conservation. 10. National parks, recreation areas, wilderness areas, wild and scenic rivers, historical sites, military parks and battlefields, and on the public domain, preservation of prehistoric ruins and objects of interest. 11. Naval petroleum reserves in Alaska. 12. Nonmilitary development of nuclear energy. 13. Oil and gas production and distribution. 14. Public lands and forests, including farming and grazing thereon, and mineral extraction thereon. 15. Solar energy systems. 16. Territorial possessions of the United States, including trusteeships. 17. Such committee shall also study and review, on a comprehensive basis, matters relating to energy and resources development, and report thereon from time to time.<sup>77</sup>

The example above indicates that the rules are pretty straight forward when it comes to jurisdiction. It is both broad and specific.

#### Referrals- Senate Rule XVII

Like the House, when a member introduces a bill, it is referred to a committee.

The chair has discretion of which bill the committee will consider.<sup>78</sup> It is important to note that the focus of this section is on multiple referral of bills, not jurisdiction issues overall. While it is rare, multiple referrals still do occur in the Senate. According to CRS,

Senate Rule XVII allows a measure to be referred to multiple committees for consideration. Two types of multiple referrals are allowed. A joint referral allows a measure to be referred to two or more committees for simultaneous consideration, while a sequential referral involves successive consideration by committees.<sup>79</sup>

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<sup>77</sup> U.S. Senate, *Standing Rules of The U.S. Senate*, (Washington DC, 2013), 47.

<sup>78</sup> Judy Schneider, *Committee Jurisdiction and Referral in the Senate*, (Washington DC: Congressional Research Services, 2008), 1.

<sup>79</sup> Ibid.

It is important to note that as described, Senate Rule XVII sets forth two different types of multiple referrals. Simultaneous consideration or sequential are different and both would have a different impact on the process. On one hand, a simultaneous consideration may at the surface produce gridlock as a turf war would commence. On the hand, a sequential referral may enhance the policymaking process by allowing a bill to be “improved” upon.

It is important to note that multiple referrals are rare. In fact during the 108<sup>th</sup> Congress, only .42% of measures were multiply referred.<sup>80</sup> In the House, the rate was much higher at 20.65%.<sup>81</sup> Since the 101<sup>st</sup> Congress the percentage of multiple referred has been around 1%, and peaking at 3.99% in the 102<sup>nd</sup> Congress.<sup>82</sup> Just the rarity of multiple referral is an indication that it may not be a “major issue” in terms of jurisdictional battles in regards to the policymaking process. However, it still does occur and it still makes an impact on important pieces of legislation. In the end, multiple referrals are issued by actors in the policymaking process, which will be further discussed below.

#### Riddick’s Senate Procedure: Precedents and Practices

An essential tool that the Senate uses for procedure is a document known as *Riddick’s Senate Procedure: Precedents and Practices*. *Riddick’s* was “named after Senate Parliamentarian Emeritus Floyd M. Riddick, this Senate document contains the contemporary precedents and practices of the Senate... It is updated periodically by the

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<sup>80</sup> Walter Oleszek, *Congressional Procedures and the Policy Process*, 87.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

Senate Parliamentarian.”<sup>83</sup> Roll describes *Riddick’s* in that “more than 10,000 precedents are spelled out in Riddick’s Senate Procedure, the bible of the chamber’s parliamentarians.”<sup>84</sup> Former Sen. Thomas Eagleton said of *Riddick’s*, “the nearest thing to the Bible that the Senate has.”<sup>85</sup> That is certainly not an understatement.

*Riddick’s* expands on the formal jurisdictional claims established by Rule XXV.

“r. The following bills were referred to the above committee... the question of reference having been raised:  
i. A Bill to extend the provisions of the Federal Airport Act to the Virginia Islands; ii. A bill to confirm and establish the titles of the States to lands and waters and to provide for the use and control of said plans and resources.”<sup>86</sup>

For jurisdictional purposes, *Riddick’s* confirms what scholars have written about the Senate, that precedent, and not formal rules dictate the procedure of the Senate. However, Elizabeth Rybicki of Congressional Research Services describes *Riddick’s* as not having “a ton of information” in regards to referrals.<sup>87</sup> So while this “bible” of the Senate is very useful in knowing and classifying precedent in the Senate, it only partially solves the inherent issue of committee turf wars. This problem of multiple referrals may not be rare, but *Riddick’s* does not have the final answer that it may have for other procedures of the Senate, such as on the floor. Therefore the behavior of individual actors during the policymaking process must be examined.

### *Healthcare Legislation and Jurisdiction*

Before one examines the role of individuals, some case studies may shed more light on jurisdictional issues. As noted above, in the Senate, jurisdictional issues usually

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<sup>83</sup> *Riddick’s Senate Procedure: Precedents and Practices*, (Washington DC: US Government Printing Office, 1992).

<sup>84</sup> Niels Lesniewski, *Riddick’s Tome Unlocks Quirky Senate Powers*, (Washington DC: Roll Call, October 12, 2011).

<sup>85</sup> Ibid.

<sup>86</sup> *Riddick’s Senate Procedure*, 418.

<sup>87</sup> Elizabeth Rybicki, *Correspondence*.

occur when there is a major policy initiative that is broad. One issue where this has occurred in the past is healthcare. In both the *Health Security Act* and the *Affordable Care and Patient Protection Act*, two committees, the Senate Finance committee and the Senate Health, Education, and Labor (HELP) were tasked with “producing that chamber’s version of health care legislation.”<sup>88</sup> In 1993, it was Finance and Human Resources Committee which, instead of working on two different versions with the end goal of “working it out” and merging into one bill, could not come to an agreement. Indeed, healthcare still remains a contentious issue that will continue to challenge the rarity of committee jurisdiction battles in the Senate.

#### Affordable Care and Patient Protect Act

It should be noted technically the *Affordable Care Act* was never formally referred in the Senate. In breaking with typical legislative process protocol, the committees themselves introduced the legislation through the markup process.<sup>89</sup> This has been characterized as being a “technicality.”<sup>90</sup> Therefore, it is still a useful case study in how the Senate handles jurisdiction and ultimately merging two different pieces of legislation and merging it into one.

Obviously healthcare is one of those issues that would have a broad appeal. Not only is it broad, it is a controversial issue as well. Therefore, simultaneously working on two different bills made sense because the issue is very comprehensive. The Finance committee dealt with the legislation because under jurisdiction rules and precedent the committee dealt with “health programs under the Social security Act and health programs

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<sup>88</sup> John Cannan, *A Legislative History of the Affordable Care Act: How Legislative Procedure Shapes Legislative*, (Philadelphia PA: Drexel University Law Journal, 2013), 143.

<sup>89</sup> John Cannan, *A Legislative History of the Affordable Care Act*, 144.

<sup>90</sup> Ibid.

finance by a specific tax or trust fund.”<sup>91</sup> Of course, “Finance” is not the first word that comes to mind when mentioning healthcare. The healthcare proposal needed some sort of funding source, therefore the Finance committee had jurisdiction. The Finance healthcare version is remembered as the “gang of six” whom attempted to produce a bill. This gang of six included Democratic senators, Max Baucus, Jeff Bingaman, and Kent Conrad, as well as three Republic Senators, Mike Enzi, Chuck Grassley, and Olympia Snow. They met for months in 2009 but were unable to come to an agreement.<sup>92</sup> The Finance version took the longest, was more in the spotlight and was the more contentious of the two bills that were being deliberated in committee.

The HELP committee would be the more obvious choice to take up a healthcare bill. According to Senate rules and precedent the HELP committee has jurisdiction in matters concerning “education, labor, health, and public welfare.”<sup>93</sup> This committee is generally thought of as being more liberal and up to the task of passing a comprehensive piece of legislation. After aggressive Markup sessions it was held for a couple of months and reported to the floor with a committee report.<sup>94</sup> Again, the legislation did not have the same public scrutiny as the Finance bill.

Due to the two different committees having vastly different intentions and membership, two pieces of legislation were produced. Since this was a historic measure, blending the two bills was extremely important. Majority Leader Harry Reid then became the lead Senator on the bill as “led the effort by prominent Democratic senators and the

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<sup>91</sup> Senate Rules, 101.

<sup>92</sup> John Cannan, *A Legislative History of the Affordable Care Act*, 143.

<sup>93</sup> *Senate Rules*, 119

<sup>94</sup> John Cannan, *A Legislative History of the Affordable Care Act*, 145.

White House to merge the HELP and Finance Committee bills into one.”<sup>95</sup> The legislative history becomes more complicated after the Senate bill was blended into one as House bills were merged and the budget reconciliation process had to be implemented for final passage.

The *Affordable Care Act* is proof that when it comes to a contentious and broad issue, the Senate does use multiple referrals. However, it did so in terms of jurisdictional overlap, not necessarily “turf wars” that may be associated with such high profile pieces of legislation. The Senators deferred to the standing rules and *Riddick*’s there was no need for the Parliamentarian or the Majority Leader to act as a referee. This is a case where it made sense for two different committees to work on separate pieces of legislation. The end goal would be a merged bill, and with by working on the legislation simultaneously, it was easier for the bill to be rectified behind closed doors. If the two bills were worked in sequentially, the likelihood of roadblocks would have occurred. Also, the two committees would have seen themselves competition with themselves and forgetting that eventually they would have to make concessions in order to pass one merged bill.

#### Health Security Act of 1993

The healthcare debate of 1993 did not have the same positive result. Instead of enhancing jurisdictional issues actually halted the process. The *Health Security Act* was a contentious bill. The two committees could have come to an agreement:

On the Senate side a similar power struggle broke out between the Finance and [Labor and] Human Resources Committee [which the HELP committee was known as the time]. The committees eventually reviewed bills with the segments having to do with overlapping jurisdiction

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<sup>95</sup> John Cannan, *A Legislative History of the Affordable Care Act*, 146.

deleted. This diverse and controversial legislation would have required consensus to move along, and such consensus could never be developed. It is evident that the differing jurisdictions could make passage difficult even for simpler legislation.<sup>96</sup>

Unlike the *Affordable Care Act* these Senators in the 1990s did not see their role as “staying in their lane” and “working it out later.” Ultimately, these actions played a role in dooming the *Health Security Act*.

Despite how the legislative history of the *Affordable Care Act* will be remembered one must keep in mind in terms of the committee history in the Senate, the process was rather smooth. It did take time, and yes the “gang of six” did fail, but in the end two different bills were reported to the floor. The Senate learned its lesson from the healthcare debate of the 1990s, instead of debating jurisdictional boundaries during the committee process, it is better to have different committees work on separate pieces of legislation and then “work it out” later. In fact, what made the *Affordable Care Act* successful is that it was generally agreed upon before the bills were taken in committee that this was the proper route. Also, there is a difference. As mentioned above, this phenomenon of multiple referrals in the Senate only happens on average around 1%, but when this rarity occurs, the Senate becomes a spectacle that commands attention from the media and public at large.

#### *Jurisdiction and Senate Actors*

This chapter has focused on the role of rules and precedent in regards to Senate committee jurisdiction. Rules and precedent is important (especially in the case of the Senate- as precedent is the determining factor), but one cannot ignore the role that people

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<sup>96</sup> Marion Danis, Carolyn M. Clancy, Larry R. Churchi, *Ethical Dimensions of Health Policy*, (Oxford University Press: New York, New York,), 173.



have in the process. This would include the Senate Parliamentarian, the committee chairs, leadership, and individual senators. The office of Senate Parliamentarian is particularly interesting, as this office may be over shadowed by the personalities of who these driven Senators.

### Parliamentarian

For the most part, the Senate Parliamentarian is a non-controversial position. Many characterize the office as being merely administrative and advisory. In terms of referral, they usually just defer to the rules and *Riddick's*. Rybicki stated the following about the Senate Parliamentarian:

I imagine prior referral decisions would be the Parliamentarian's major resource. I do not know anything about the nature of the files or notes in the Office of the Parliamentarian, but certainly they research where bills on the same subject were referred before, and these prior referrals establish precedent for subsequent referrals. Staff of interested committees will sometimes discuss referral issues with the Parliamentarian, who, after all, is not an expert on the particular policy in question. If it is an area with jurisdictional overlap or perhaps a history of disagreements between committees, the Parliamentarian might even seek arguments from the committee staff of all the interested committees. But discussions with staff over where to refer a bill are not common.<sup>97</sup>

However, when it comes to controversial measures such as healthcare legislation their role becomes more known and defined. This was particularly true during the 2009-2010 *Affordable Care Act* debate.

Near the end of the debate on the *Affordable Care Act*, the Senate Parliamentarian played a key role. This was an extreme instance where the Senate Parliamentarian becomes a referee. This occurrence is described below:

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<sup>97</sup> Rybicki, *Correspondence*.

While reconciliation was politically expedient for health care reform advocates, it presented some procedural pitfalls that had to be navigated to achieve an up or down vote. The referee over how to proceed in the Senate was that chamber's parliamentarian, a normally obscure post which had temporarily risen in prominence thanks to the health care debate. On March 11, the Senate Parliamentarian had ruled that the House had to pass House bill 3590, and it had to be signed by the President into law, before the Senate could even take up the reconciliation bill. After the President signed House bill 3590 on March 23, the reconciliation bill had to negotiate several potential obstacles before passage.<sup>98</sup>

Usually Senate precedent and rules would be enough for understanding how to move forward. However, the *Affordable Care Act* presented a unique challenge in that in order for it to pass it, had to be as a reconciliation bill (these types of bills are budget related and only require 50 votes, instead of the usual 60 votes to invoke cloture and end debate). The Parliamentarian took the unusual step in becoming a referee and ensuring that a bill would survive. This issue has not gone away since the passage of the *Affordable Care Act*. Republicans in 2012 were considering ways to extract parts of the Act through the budget reconciliation process. *Politico* stated that the Senate Parliamentarian would be “at the center of the decision.”<sup>99</sup> The Parliamentarian's role in the implementation of the *Affordable Care Act* is still not over.

Healthcare legislation is not the only example where the Parliamentarian has stepped into the spotlight. This would include the budget. The Parliamentarian has in the past even overruled the Majority leader:

The Senate is required by law to pass an annual budget but has not done so in three years. Senate Majority Leader

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<sup>98</sup> John Cannan, *Legislative History of the Affordable Care Act*, 165.

<sup>99</sup> Jason Milman and Matt Dobias, *Insurance rules might outlive ACA*, (Arlington VA: Politico, July 8, 2012).

Harry Reid, D-Nev., refused to bring a budget up for a vote his year citing pass of the Budget Control Act of 2011. The non-partisan Senate parliamentarian later ruled against Reid, saying the Budget Control did not remove the requirement for the Senate to propose a budget by April 1. Senate Budget Committee Chairman Kent Conrad, D-N.D., attempted to make a budget in the committee but ultimately pulled the proposal from consideration.<sup>100</sup>

It may be surprising that the Parliamentarian would have such power. However, as presiding chair the Vice-President can ignore the Parliamentarian's decision,<sup>101</sup> and Majority Leader Reid has in the past overruled a decision on allowing the Minority party to introduce amendments to a bill.<sup>102</sup> These instances are rare however.

The Parliamentarian can also serve as cover to the Majority Leader. In the past, when the Majority Leader wants to “stay above the fray” and not make a controversial decision he/she will defer to the Parliamentarian. This occurred in 2011, “Reid surprised colleagues last year when he asked for a ruling to prevent Republicans from forcing votes on uncomfortable amendments after the Senate has voted to move to final passage of a bill.”<sup>103</sup> In the end, the Majority Leader does hire the Parliamentarian. However, when given the authority and the role they play, the Parliamentarian is a unique fixture of the policymaking process. Although the Parliamentarian may not play an essential role in determining committee jurisdiction, they can be a determining factor in ensuring legislation will pass.

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<sup>100</sup> *Congressional Publications*, May 16, 2012.

<sup>101</sup> Dara Kam, *Gradual Process Hinges On Election Outcome*, (Palm Beach FL :Palm Beach Post, June 30, 2012).

<sup>102</sup> Investor's Business Daily, Editorial, *Must Pass Bill Must Be Nuked*, (October 10, 2011).

<sup>103</sup> Kate Tummarello, *Senate Will See First Female Parliamentarian*, (Washington DC: The Hill, January 31, 2012).

### Majority Leader

The leadership structure in the Senate is different than the House. The Leader does sway influence, but due to the precedent in the Senate, does not hold as much power when it comes to jurisdiction disagreement. The Leader does play an important behind the scenes role, as evident in the *Affordable Care Act* but he/she tends not rule by an iron first when it comes to jurisdiction. This is mainly due to the unique power of the individual senator. It should be noted that each majority leader is different and to infer that they may not have an essential role in jurisdictional issues does not mean they are not overall powerful. The Leader still sets the agenda and decides whether measures should be considered on the floor. The *Affordable Care Act* demonstrates that when jurisdictional issues occur it is best that the Leader ensures the two committees work simultaneously and agree upon to merge their bills once they are out of committee.

### Committee Chairman

When it comes to jurisdictional issues, the Committee Chairman plays a distinct role. They have the power to determine if their committee is to discuss a referred bill, and if there is a similar bill working together, he/she intensively works on their bill so that provisions they care about will be included in the final bill. During the *Affordable Care Act* the statutory language came from the committees, therefore it is evident that the chairman does indeed has a significant role. They can either decide to work together on a comprehensive piece of legislation (*Affordable Care Act*), or play a turf war that will ultimately doom a piece of legislation (*Health Security Act*).

### Individual Senator

Perhaps the most important actor is that of the individual Senator. As noted above, a Senator has immense power outside of the committee structure. He/she has the ability to delay any bill, something that House members do not enjoy. This greatly diminishes the influential role the committee has in a legislative body. Of course, bills will be discussed in committee; however the unpredictability of the power one Senator ensures that a bill could be derailed even if jurisdictional conflict was avoided. It appears that the power afforded to an individual senator has more of a potential to impede the policymaking process than jurisdictional conflict. The individual Senator has more power over this process than the Leader, committee chairmen, and the Parliamentarian.

### *Conclusion*

Overall, the jurisdictional conflicts do not impede the policymaking process in the Senate. Yes, it can happen, such as the case with the *Health Security Act* but that in itself was not the definitive blow. Other external issues with that particular piece of legislation have to be taken into account. Jurisdictional conflict does not impede the policymaking process in the Senate because a. it is rare; b. flexible rules and more importantly precedents dictate the process; and finally c. the power and unpredictability of the individual senator can cause more of an issue for a bill's survival than a turf war ever can.

## **Recommendation and Conclusion**

The purpose of this paper was to analyze jurisdictional conflicts in the U.S. Senate. This issue usually occurs in the House, however while it is rare, does occur in the Senate. On the surface, one would imagine that the same problems would occur in the House as it does in the Senate, just with less frequency. That does not seem to be the case. The House and Senate are very different entities. The House follows rules and structure while the Senate adheres more to precedent and tradition. The answer to the question: whether jurisdictional conflicts impede the policymaking process in the Senate is no. The hypothesis of this chapter is confirmed.

The *Affordable Care Act* is a clear indicator that despite there being some sort of jurisdictional conflict, Senators were in the end able to overcome it. Working simultaneously on separate pieces of legislation, they stayed in their lanes. The transaction costs discussed in the literature review were clearly evident. It was not worth making such a bill into a matter of a turf war. The bill itself was already controversial; there was no need for members to give the bill and themselves more media attention. Senators realize that it is easier for them to have their own “pre-conference committee” (before the more formal conference committee of the two chambers), to hash out their issues. Senators seem to take more interest in the merits of the policy, not whether they can claim full credit by winning a turf war. House members in the end rely on productivity for legitimacy at home and media coverage. Senators are more high-profiled and do not necessarily need the committee process to fulfill this need.

Therefore, it is clear that the individual senator, not the Parliamentarian, not the Committee Chairman, or even the Majority Leader is the one to blame for impeding legislation during the committee process. It is not merely the fault of egotistical

committee chairmen trying to demand their way. One Senator can threaten to hold up the entire process itself, which is more dangerous than committees deliberating on whom gets what in debating a bill. The previous chapter discusses this issue and provides a solution in terms of filibuster reform.

Is there a solution to this problem? Well, first, the question should be- is there actually a problem with the jurisdictional conflict in the Senate. The answer to that would be- no. Again, jurisdictional conflict is not the problem. If there was a recommendation to be made it would be that this is a prime example why the role of the Majority leader must be enhanced. To allow one rogue Senator to hold up the process of duly elected 99 other individuals is a monstrosity to the democracy and the policymaking process. In the House, a strong speaker has become the norm, so it should be the same with the Senate Majority Leader. Of course, just the very fact that it takes 60 votes to pass any meaningful piece of legislation may diminish his/her influence. The example of the individual Senator also indicates just how weak the committee structure is in the Senate. Yes, there are institutional reasons why Senate committees may not be strong to begin with (the ability of Senators to be on multiple committees for example which diffuses the power structure). However, the very thought of Senators circumventing the process has to be disconcerting to those who study the role of committees in the policymaking process. The committees are supposed to be where the most deliberation takes place so that experts can lend a hand in formulating solid policies. Unfortunately, jurisdictional issues in the Senate indicate that while deliberation isn't totally dead, it does not have a huge impact early on in the committee process.

On the surface, one cannot ignore that on average 99% of legislation are not multiply referred. To merely say that jurisdictional conflict does impede the process because it is rare is not accurate. Other factors in bills failing take precedence. When major pieces of legislation do occur, these committees agree to work together and not argue over jurisdictional issues. Senators on the whole seem to be more willing than House members to work together on jurisdictional issues, because they know that the real power they have is outside the committee structure: when they fulfill their role as an individual Senator and block legislation they see fit. In order for the Senate to continue to be an elite legislative body it must overcome its obsession with precedent and formalize rules or it will continue to be hijacked by rogue Senators.



## **Chapter Four: Leadership Styles in the United States Senate- Important in the Policymaking Process?**

### **Introduction**

The United States Senate is a body where the individual matters. Unlike the House, one Senator can “make or break” a piece of legislation. While this is true, the role of the majority leader, especially his/her leadership style cannot be ignored. The majority leader has quite the impact on the legislative process. From behind the scenes work to scheduling legislation, how a majority leads acts is an important ingredient in how legislation is shaped in the Senate. This paper will prove that even though the Senate has become an institution where individuals reign supreme, the leadership style of the majority leader is relevant but this impact is not the “end all be all.” Leadership style in the Senate is impacted by historical events and time periods, not necessarily character traits. One example one be that the President is the one that dictates policy in the Senate, therefore that policy may be watered down in the name of compromise. Another example is if partisan interests outweigh pragmatic behavior therefore it may mean that a bill is never even debated and brought to a vote in the first place. The power of the individual senator through the use of floor procedures makes whatever style a Leader choose almost null and void.

In order to prove that leadership style does have an impact on such an individual based body, three case studies will be conducted. First, will be Majority Leader Mike Mansfield who was leader in the 1960s and 1970s. Second, will be Majority Leader Trent Lott, who was leader in the 1990s, and the last case study will examine the current Majority Leader Harry Reid. All three men have different leadership styles. It will be important to compare and contrast these styles and whether they made a difference in the

policy process. In the age of filibusters, holds, 24/7 media, presidential speculation, the Senate has now more than ever become an institution where one Senator (junior or not) can make an outweighed impact. However, as this chapter will show- the majority leader in the end is important because their style reverberates not only in the chamber but with political actors across the policy making process.

## Literature Review

### *Introduction*

The majority of congressional scholarship on leadership styles focuses on the House Speaker. This is not surprising, as the dynamic between the Speaker and the membership is an essential part of the legislative process. However, even if the Senate Majority Leader may not yield as much power as the Speaker, this scholarship on leadership styles is still applicable. Both the Speaker and Senate Majority Leader lead their parties and chambers- thus they share the same ultimate goal: the passage of preferred legislation.

### *Style: The “Czar”*

A noted congressional leadership style is that of the “czar.” Essentially, the czar style relies on both repression and the fact that members depend on the leader to bring their legislation to the floor.<sup>104</sup> This type of style is very common. Indeed, in the House this type of style was the impetus for change as committee chairmen demanded more power, which in turn reduced the influence of junior members. In the Senate, this type of style is desirable. The Senate as an institution gives more influence and power to individual members. Therefore, the Majority Leader is in a constant struggle between either leading or being a “first amongst equals.” The way to solve this issue is for the majority leader to personify this style. Lyndon Johnson is a glowing example of this style and he was successful in passing controversial legislation.

### *Style: Decentralization the “Bargainer”*

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<sup>104</sup> Joseph Cooper and David Bradley, *Institutional Context and Leadership Style: The House from Cannon to Rayburn*, (American Political Science Review, June 1981), 411.

The opposite of the czar is the leader who promotes decentralization.

Decentralization delegates power amongst members, specifically in the committee structure.<sup>105</sup> The leader depends on his/her lieutenants (committee chairs) to pass their preferred legislation. This style promotes a sense of deliberation and bargaining. During the deliberation process, bargaining is extremely important in improving legislation and increasing its chances of passage. It can be argued that this style is not preferred by the leader. It is risky because by releasing power the leader does not have any control over the legislative process. The likelihood that the bill he/she supports may not be what the leader recommended or wanted. This type of style seems to have been forced upon the leader by members in the caucus/conference. This style may be viewed as one of weakness; however, it does promote deliberation and a healthy environment in the legislative body. Therefore it perhaps best viewed as one of pragmatism.

*Style: Personalized*

The third type of leadership style is a personalized approach.<sup>106</sup> Those who embodied this style would be Lyndon Johnson.<sup>107</sup> This is ultimately a style that is based upon the “power of persuasion.”<sup>108</sup> These leaders were successful in cultivating relationships on a personal level. The members of their caucus/conference felt a sense of duty and loyalty, which in turn kept them in check. These leaders also demonstrated a keen sense of accommodation and empathy.<sup>109</sup> Inter-personal skills make these leaders

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<sup>105</sup> Copper and Bradley, *Institutional Context and Leadership Style*, 418-19.

<sup>106</sup> Copper and Bradley, *Institutional Context and Leadership Style*, 421

<sup>107</sup> Samuel C. Patterson, *Party Leadership in the U. S. Senate*, (Legislative Studies Quarterly, August 1989), 395.

<sup>108</sup> Ibid.

<sup>109</sup> Patterson, *Party Leadership*, 396.

effective and successful. This style is a true embodiment of the meaning of a politician. This style demands the loyalty of the membership by accommodating their needs.

### *Leadership is Situational*

The leadership styles described above paint a broad picture of the different styles implemented by Leaders of the past. Styles are relevant to the policy process and depending on the given situation a Leader will choose which one works best. It is important to note that Leadership styles are situational.<sup>110</sup> Indeed, the Leader also has to deal with the “limits” imposed by the Senate’s structure.<sup>111</sup> The structure itself forces the leader to be adaptable. Leaders that recognize when different situations have occurred and by responding properly will ultimately be successful.

### *Conclusion*

The literature does point out that the leadership styles are relevant and should be studied as part of the policymaking process. However, due to the situational nature of these styles, overall it may have a limited impact. Regardless, as a body of individuals, it is important to study how the Leadership interacts with the membership in pursuing major policy initiatives. It is apparent that Leaders must recognize different situations and that it is difficult to be consistent with their type of style. It is an important part of the policy process for these Leaders to be adaptable.

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<sup>110</sup> Patterson, *Party Leadership*, 394.

<sup>111</sup> Ibid.

## **Methodology**

### *Description of Evidence*

This chapter will study the impact of Senate leadership style on the policymaking process by using three case studies of previous Majority Leaders. The first case study is on the tenure of Senator Mike Mansfield (D-MT). This will focus primarily on the Senator's role in passing major pieces of legislation that had national importance. The second case study focuses on the tenure of Senator Trent Lott (R-MS). This case study examines Senator Lott's interaction with increasingly conservative conference. The last case study examines Senator Harry Reid (D-NV). This case study primarily focuses the modern era of the Senate where obstruction reigns supreme.

These case studies will be different as the three Leaders were in their positions in distinctly different times. Senator Mansfield's for example, will examine his role in major national legislation, such as civil rights and had more of a deferred role to the executive. On the contrary Senators Lott and Reid had to deal with frustration within their own ranks. While these studies will yield different outcomes, all of them will include the number of bills passed during each Leader's tenure. This will help to determine the productivity of their tenure as this thesis is ultimately studying positive outcomes (passage of bills) in determining the Senate's impact on the policymaking process.

### *Methods of Analysis*

The three case studies above will help answer my hypothesis, which is that the Majority Leader has an impact on the legislative process however their leadership style is not the most important key of this influence. All three case studies come from different eras and the three leaders will have their styles tested. However, by comparing their

styles to the historic eras of which these leaders serve, one will be able to understand that styles are limited in scope and that other factors have more influence on the policymaking process.

## **Michael Mansfield- Deference to the Executive**

### *Style of Leadership*

Senator Michael “Mike” Mansfield (D-Montana) was the Senate Majority Leader from January 1961-January 1977. During Mansfield’s tenure as Majority Leader the United States underwent considerable social change at both home and abroad. Mansfield also entered the leadership role after succeeding Lyndon Johnson, whom by all accounts certainly possessed strong leadership skills in his role as Leader. In fact, Mansfield was reluctant in taking the role after Johnson became Vice President.<sup>112</sup> Also, in the beginning of Mansfield’s tenure as Leader, the Kennedy-Johnson Administration had enormous influence in his office due to staffing arrangements.<sup>113</sup> When he was Majority Leader, Lyndon Johnson was known for his tireless work ethic and intense pressure on his colleague. One can view Mansfield’s style of leadership as a rebuke of the Johnson’s intensity and could be described as “humble.”<sup>114</sup> Senator Thruston Morton (D-KY) described Mansfield as “starting out too easy” and was more accommodating to his colleagues’ needs than Johnson.<sup>115</sup> Indeed, the leadership styles of these two men were completely different.

A major component of a Leader’s role is his/her relationship with the committee system. Mansfield took his humble style of leadership in this arena as well. Mansfield gave control of the Senate agenda to the Steering Committee. Not only did he give more control to the Steering Committee, Mansfield was not a proponent of persuading or

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<sup>112</sup> Andrea Hatcher, *Majority Leadership In The U.S. Senate*, 131.

<sup>113</sup> Andrea Hatcher, *Majority Leadership In The U.S. Senate*, 130.

<sup>114</sup> *Ibid.*

<sup>115</sup> Thruston Morton, *Interview with Thruston Morton*, (Lyndon Baines Johnson Presidential Library, February 26, 1969), 6.



pushing legislation.<sup>116</sup> In fact, his style was so lenient that Senator William Proxmire (D-WI) said that “Mansfield felt that it wasn’t his function” to persuade or push bills.<sup>117</sup> This too was in sharp contrast to Johnson.

While there was both a Democratic President and a Republican President Mansfield was a proponent of deferring to their administration’s agenda.<sup>118</sup> While there was a Democratic President, Mansfield has been quoted as saying, “my job is to represent the Senate to the president, and the president to the Senate.”<sup>119</sup> Numerous phone records between Johnson and Mansfield indicate that he would refer to him as “boss.”<sup>120</sup> While there was divided government during his tenure, Mansfield “seemed to flounder and return to the status quo of deference to the president.”<sup>121</sup> Essentially as Hatcher writes, was that “an important duty of his [Mansfield’s] majority leadership- to buffer the president against himself,<sup>122</sup> therefore deference was the logical choice. However, Mansfield’s was not consulted on escalation matters with Vietnam<sup>123</sup> (he was a staunch opponent) is an example of how his commitment to presidential deference may have diminished his influence in framing the Senate’s foreign policy during the Johnson Administration.

One may assume that Mansfield was a “push-over,” however this not a matter of being weak or not; but a case of an individual who realized how the office of Senate Majority Leader is constrained by forces outside of his control- specifically how the

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<sup>116</sup> Andrea Hatcher, *Majority Leadership In The U.S. Senate*, 131-132.

<sup>117</sup> William Proxmire, *Interview with William Proxmire*, (Lyndon Baines Johnson Presidential Library, February 4, 1986), 14.

<sup>118</sup> Andrea Hatcher, *Majority Leadership In The U.S. Senate*, 132.

<sup>119</sup> Andrea Hatcher, *Majority Leadership In The U.S. Senate*, 133.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> Andrea Hatcher, *Majority Leadership In The U.S. Senate*, 134.

president exerts control and influence on the chamber. Mansfield saw it as his obligation, particularly to a president of his own party that he worked for him, not with him. In fact Mansfield once said that if there was such a great difference between a president of his own party and himself that could not be rectified, he would resign.<sup>124</sup> This is in sharp contrast to how other Majority Leaders would react in similar circumstances.

### *Important Legislation*

It is important to remember that Mansfield's tenure as Leader implemented extraordinary legislation during his tenure. While some would argue that it was the president's agenda, because Mansfield would defer to him, it still had to pass the Senate. In order to evaluate Mansfield's leadership style holistically, one must study how two of the important pieces of legislation in the modern era: the Civil Rights Act of 1964.

In 1959, while he was the Majority Whip and during a previous civil rights resolution, Mansfield said in regards to civil rights and Senate leadership in general:

If the leadership of the Senate, particularly the leadership of the majority, has any function at all is to separate the possible from the presumptuous, and then to see to it that this body works to bring about the possible. The distinguished majority leader is doing that in the issue of civil rights.<sup>125</sup>

"The possible from the presumptuous," that is certainly representative of how Mansfield viewed leadership qualities in the Senate. Pragmatic and accommodating would be words that would describe this approach to leadership. Mansfield accepted reality as he continued in this civil rights 1959 speech, "the Senate can do many things, but there are some laws which cannot do. It can share in the making of the laws, but it cannot

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<sup>124</sup> Ibid.

<sup>125</sup> Mike Mansfield, *The Question of New Civil Rights Legislation: PRO*, (Congressional Digest 39, 1960), 10.

administer or enforce the law. The Senate can point the way to leadership, but it cannot itself lead.”<sup>126</sup> Mansfield understood that the Senate was a player in the larger scheme of government, it had a role, but not “thee” role. However for civil rights, with two-thirds of a majority needed to end southern filibusters, Mansfield would continue his belief in being fair, but also now had to be stern. Now as the Majority Leader, Mansfield had an important role in passing historic legislation. Although two civil rights acts were passed in 1957 and 1960 respectively, these laws were limited in scope. President Johnson made Civil Rights the essential hallmark of his agenda after President Kennedy was assassinated. On February 10, 1964 the House of Representatives voted for the Civil Rights Act of 1964 290-130.<sup>127</sup> The bill was sent to the Senate for its consideration. In what proved to be the most important decision during his tenure:

Senate Majority Leader Mike Mansfield (D-Mont.) then took an unusual step: Instead of referring the bill to a committee, he made a motion to place the bill directly onto the Senate calendar. Numerous Senators objected, arguing that it was vital for a committee to examine the bill. Nevertheless, Mansfield won the vote on his motion 54 to 37.<sup>128</sup>

The Civil Rights Act would have been doomed in the committee; this action ensured its survival in the Senate. It would not be easy, as the Senate Historic Office writes:

Minnesota Senator Hubert Humphrey, the Democratic whip who managed the bill on the Senate floor, enlisted the aid of Republican Minority Leader Everett M. Dirksen of Illinois. Dirksen, although a longtime supporter of civil rights, had opposed the bill because he objected to certain provisions. Humphrey therefore worked with him to redraft the controversial language and make the bill more acceptable to Republicans. Once the changes were made,

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<sup>126</sup> Ibid.

<sup>127</sup> Congressional Record, February 10, 1964.

<sup>128</sup> Nicole Gueron, *An Idea Whose Time Has Come: A Comparative Procedural History of the Civil Rights Acts of 1960, 1964, and 1991*, (New Haven CT: The Yale Law Journal, March 1995), 1219.

Dirksen gained key votes for cloture from his party colleagues with a powerful speech calling racial integration ‘an idea whose time has come.’<sup>129</sup>

It took months and key amendments but the Senate finally arose to the occasion that Mansfield hope the body would in 1959. True to his form, Mansfield made sure he would accommodate his fellow colleagues, even those who opposed him on this issue. In the minutes recording his meeting Senator Richard Russell, Mansfield stressed that he would keep the opposition informed. Also Mansfield stated that the legislation was in the best interest of the President and the Party and that he would ultimately ask for their help.<sup>130</sup> Such accommodation and thought would be a rare occurrence today.

#### *Success at Passing Measures*

Table 2

#### **Number of Measures Passed in the Senate during Senator Mansfield’s Tenure as Majority Leader:**

| <b>Year</b> | <b>Number of Measures Passed</b> |
|-------------|----------------------------------|
| 1961        | 1,133                            |
| 1962        | 1,212                            |
| 1963        | 861                              |
| 1964        | 830                              |
| 1965        | 967                              |
| 1966        | 1,001                            |
| 1967        | 965                              |
| 1968        | 766                              |
| 1969        | 684                              |
| 1970        | 992                              |
| 1971        | 604                              |
| 1972        | 767                              |
| 1973        | 726                              |
| 1974        | 838                              |
| 1975        | 682                              |

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<sup>129</sup> Senate Historical Office, *Landmark Legislation: The Civil Rights Act of 1964*.

<sup>130</sup> Mike Mansfield, “*Minutes of Meeting with Senator Russell*,” (February 19, 1964, Mike Mansfield Papers, Series 22, Box 28/12, p.1, University of Montana).

|              |               |
|--------------|---------------|
| 1976         | 870           |
| <b>Total</b> | <b>13,898</b> |

Source: Senate Historical Office

Senator Mansfield had an impressive number of measures passed during his tenure. The average number throughout his time as Majority Leader is **869**. It is interesting to note that the number of measures passed decline during the latter half of his tenure. This is perhaps due to the situation in Vietnam and its impact a creating a more toxic environment in the chamber.

### *Conclusion*

Senator Mansfield's leadership style can be seen as controversial for those who are wary of presidential power. Controversial yes, but Mansfield's style was forced upon him due to the historic events of his time. Civil rights was a national issue at heart, as sectionalism was hampering this effort. Mansfield was correct in allowing the President to become a major player on this issue and his ability to adapt allowed for the Senate to pass such historic legislation.

Was Mansfield subservient to the President? It can be argued that he was, however, it is apparent that Mansfield was doing what he thought was in the best interest of the institution. It can be argued that Mansfield did not work for but he worked with administration, acting as a type of liaison, even as issues such as the Vietnam War, which is opposed. However, this was certainly not an equal relationship due to the constraints of the Senate as an institution.

Mansfield's tenure indicates that the Senate's institutional constraints and historic events had more of an impact than his general style. The institutional problem of

sectionalism in the Senate forced Mansfield to difference to the President nationalized the issue. The historic events of Civil Rights, Great Society, and the Vietnam War also called for bold national leadership that only the President can provide. Mansfield had to adapt, and because of his adaption, he ultimately had a successful tenure as Majority Leader.

## **Trent Lott-The “Pragmatic” Partisan Warrior**

### *Leadership Style*

In 1995, Senator Trent Lott (R-MS), became the Majority Whip after his party gained the majority. This was not the typical Republican majority found in the Senate. In the past, the parties would go back-and-forth in securing majorities, while the Democrats would dominate the House. In 1994, this all changed, as the Republican Party headed by Newt Gingrich’s “contract with America” ignited a conservative revolution that allowed for Republicans to win up and down the ballot. When the new congress was gaveled into session in January of 1995, Robert Dole (R-KS) was the Leader. Lott had an extremely competitive race for the whip position, as he beat Senator Alan Simpson (R-WY) by only one vote.<sup>131</sup> However, as it became apparent that he could not run for president and still be an effective Leader, Dole resigned in June of 1996. This capped a career that he had been working on since his days in the House of Representatives starting in the 1970s.

In terms of obtaining party leadership, Trent Lott comes from a very traditional background. Andrea Hatcher writes, as the whip Lott “operated as deal-maker and vote-counter while building a constituency that would support him as majority leader.”<sup>132</sup> Not only did he have the experience and the relationships, Lott did have a conservative streak to him that demanded the respect of his the new conservative majority. Not only was he ideologically driven, Lott was a partisan, “Lott can be ferociously partisan, as when he made headlines for his remarks implying that Republicans and Democrats use ‘different

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<sup>131</sup> David Cloud, *Lott has Pole Position in 'Race' for Leader*, (*CQ Weekly*: February 1996), 385.

<sup>132</sup> Andrea Hatcher, *Majority Leadership in The U.S. Senate*, 80.

sides of their brains.’”<sup>133</sup> However, being a partisan does not necessarily mean you will receive the reins to lead your party in the Senate.

Lott has been described as a partisan on the outside but a pragmatic politician on the inside. Hatcher writes, “His [Lott] senatorial career was one of aggregation of experience in which Lott established strong credentials that masked what many outsiders viewed as a hard core of conservative ideology.”<sup>134</sup> However, as Cloud notes,

Yet Lott also has a pragmatic streak that is sometimes at odds with his image as an ideologically driven conservative... Lott has pushed - sometimes quietly, sometimes openly - for Republicans to put aside their hope for sweeping change, tone down the partisanship, and get results.<sup>135</sup>

Also, with a new Republican majority resulted in a new expectation of the relationship between members of the conference and the leader. Cloud writes,

From the start, Lott, 54, has demonstrated a kinship with the group of aggressive, young and conservative senators, many of whom he knows from the House. ‘There is something of a generational change going on. There are a few of the World War II-era people still here, but I do have a little different style,’ he says. When junior senators talk about wanting a new style of leadership, they describe a leader who is more approachable and more inclined to share power than the mercurial Dole.<sup>136</sup>

Junior members expected that Lott would be more approachable because they saw him as “one of them.” This is another hallmark of his pragmatic style of leadership.

While Senate insiders will claim that Lott was a pragmatic force, his ideological/partisan past made him a controversial choice as Leader according to many outside observers. A *Rolling Stone* profile painted Lott in a negative light and not as a

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<sup>133</sup> David Cloud, *Lott has Pole Position in 'Race' for Leader*, 386.

<sup>134</sup> Andrea Hatcher, *Majority Leadership in The U.S. Senate*, 80.

<sup>135</sup> David Cloud, *Lott has Pole Position in 'Race' for Leader*, 386.

<sup>136</sup> Ibid.



pragmatic statesman. William Greider writes, “Senator Lott frequently pops off, perhaps a symptom of his own frustrations or insecurity as majority leader. Last summer [1998], for instance, he delivered an impromptu jeremiad against gays that sounded gratuitously hostile coming from someone in such an influential position.”<sup>137</sup> Also, Greider paints Lott as not being driven policy wise by national (as one may expect a Leader to be), but interested in trivial matters in Mississippi:

He pursues a broad range of local causes, some quite trivial, some unseemly for a majority leader. Last year, for instance, colleagues were shocked when Lott tried a legislative end run to lengthen the duck-hunting season in his home state. Then, at the last minute, Lott tacked into the year-end omnibus budget bill a provision that forgives a small Mississippi water district for its \$1.5 million debt to the federal government.<sup>138</sup>

One can argue that this is an attribute of pragmatic leadership. As the majority leader, Lott knew that he could use the pork-barrel system to affirm his popularity at home, while he could be a national leader for the Republican Party in Washington.

#### *Noted Tenure- Impeachment Proceedings And Resignation*

Trent Lott is perhaps best known for his role during the Clinton impeachment proceedings. In the fall of 1998, Clinton was impeached by the House on charges of perjury and obstruction of justice. Lott knew that as a Republican leader he would take a significant role in casting Clinton as being unfit for the presidency. Unlike Mansfield, he did not see his role as deferring to the executive. Yes, the fact that Clinton was not a member of the same party certainly played a role, but Lott went even further than simply ensuring that the Senate was a co-equal partner in the government. Lott wanted to make

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<sup>137</sup> William Greider, *Trent Lott: Power Failure*, (Rolling Stone: 1999), 35.

<sup>138</sup> Ibid.

the executive look beholden to the Congress, while a trial would help this cause, he did not want Clinton to dominate the Senate's agenda.

During the impeachment crisis, Lott questioned if Clinton had the moral stance to be president of the United States.<sup>139</sup> Since he successfully was able to work up the ranks of leadership, Lott was an astute politician. As such, Lott "maintained a scrupulously low profile on impeachment."<sup>140</sup> In fact, Lott was not even in Washington while the House impeachment proceedings were taking place.<sup>141</sup> Before the trial, Lott was "taking the relatively safe course of pushing for a quick Senate trial, even though he knows that White House lawyers will dictate the timing, at least in the early stages. He is determined that, no matter how long the pre-trial wrangling, he will not allow Clinton's case to consume the Senate."<sup>142</sup> Although he wanted to make his conservative colleagues gleeful at the fact that they were aiming at Clinton, he did not want him to have the upper hand.

Lott knew that his side did not have the necessary two-thirds majority to remove Clinton from office. He viewed a quick trial as ensuring that his conference would support him and that the Senate would not become a spectacle. After the trial, the Republican brand was hurt. The party had to move on with its agenda "Senate Majority Leader Trent Lott, R-Miss., and House Speaker J. Dennis Hastert, R-Ill., both seem inclined toward pragmatism."<sup>143</sup> However, his leadership quality- pragmatism was damaged. Even though the trial was relatively quick, the outcome was not surprising. Conservative junior members were disappointed and Lott's reputation was damaged.

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<sup>139</sup> Ibid.

<sup>140</sup> Carroll Doherty, *IMPEACHMENT OF THE PRESIDENT: Senate's Uncertain Course*. (CQ Weekly: 1998), 3326.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Jeffrey Katz and Jackie Koszczuk, *IMPEACHMENT OF THE PRESIDENT: GOP's Recovery Strategy: Get Back to Legislating*. (CQ Weekly: 1999), 354.

Lott's tenure as majority leader quickly came to an end in June 2001, after Senator Jim Jeffords (VT) left the conference and became an independent. His time as Republican leader ended abruptly on December 20, 2002. Weeks earlier, Lott said "'If the rest of the country had followed our lead [in voting for Strom Thurmond as president], we wouldn't have had all these problems over all these years, either.'"<sup>144</sup> Indeed, his checkered past with racial issues consumed his pragmatism on that December day. With his colleagues flustered that they were in the minority and an offensive stance that certainly did not help the party brand, Lott was forced to resign. His years as a pragmatist may have served him well in obtaining the leadership, but in the end his strident ideology prevailed.

#### *Success at Passing Measures*

Table 3

#### **Number of Measures Passed in the Senate during Leader's Lott's Tenure as Majority Leader:**

| <b>Year</b>  | <b>Number of Measures Passed</b> |
|--------------|----------------------------------|
| 1996*        | N/A                              |
| 1997         | 385                              |
| 1998         | 506                              |
| 1999         | 549                              |
| 2000         | 696                              |
| 2001**       | N/A                              |
| <b>Total</b> | <b>2,136</b>                     |

Source: Senate Historical Office

\*Took office June 12, 1996, undeterminable number from Congressional Resume Activity

\*\*Resigned from office June 6, 2001: undeterminable number from Congressional Resume Activity

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<sup>144</sup> John Cochran, *Republicans Struggle to Put Lott's Race Issue to Rest Quickly*, (CQ Weekly: 2002), 3245.

The average number of measures passed during Senator Lott's tenure is **534**. This number is smaller than Senator Mansfield's. This lower production rate can be attributed to the hyper polarization of the Senate that came to a head during this era.

### *Conclusion*

Senator Lott's tenure as Majority Leader was tenuous at best. It can ultimately be said that it was not successful, as he was forced to resign from a controversial statement. Lott had to deal with a Republican conference that was primarily focused on removing a president from office. Lott knew that this political was damaging, but in his pragmatic way allowed for a trial that allowed his membership to highlight their vitriol opposition to President Clinton. Lott was constrained by an institution that promotes individualism, and particularly in the new era of cable television that arose, the Senate became more of spectacle than a body of deliberation. This pragmatic style may have kept some members of his party contempt, it was not enough break through the gridlock needed to pass major pieces of legislation.

Lott was not afforded the opportunity to tackle the "major" issues, as he was concerned about making his conference in check and holding onto power. He was successful in that he was not ousted, but Lott did not personalize his relationship like other Leaders. Lott found himself with little support from his fellow Republican Senators when he made those controversial statements about race. Lott's ultimate failure to keep his conference at bay ushered in a new era where the Senate is not just a not a vehicle for productive legislation activity. The institutional problems of the Senate were victorious over his pragmatic style of leadership.

## Harry Reid- A Partisan but Determined Leader

### *Style of Leadership*

Senator Harry Reid (D-NV) became the majority leader after a Democratic wave in 2006. Having served as the minority leader for the previous two years, Reid set out to fully implement the Democratic agenda since the House was also won by the Democrats. Reid, like Lott, worked methodically up the ranks of leadership. Reid was first a representative then in 1986 was elected to the Senate. Before becoming minority leader in January 2005, Reid served as Senator Tom Daschle's Whip. After Daschle lost his reelection effort in November 2004, Reid became the choice to lead the Democratic caucus. Reid took the reins of leadership with a slim majority in January 2007; he knew that he had to run a "tight-leash" in order for his caucus to be successful.

If there was only one word that could describe Reid's leadership style it would be "determination." As Daphne Retter wrote:

Reid's operating style has changed very little from the previous two years, when he was the minority leader and received high marks — glowing from his own side, grudging from the GOP — for his skill at finding ways to close Democratic ranks for or against the question of the day. He has acted hardly at all as a legislative diplomat or dealmaker, but almost always as a partisan with what his friends and foes alike describe as a political backbone of steel.<sup>145</sup>

During his first congress as Leader, Reid had to make sure his caucus was discipline. It was the final two years of the Bush administration and was determined to undermine his unpopular agenda. It should be noted however that as a minority leader, it is easier to be

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<sup>145</sup> Daphne Retter, *Reid Takes Old Approach to His New Job*, (CQ Weekly: 2007), 1060.

partisan as you are not expected to pass legislation. However, Reid took this style and approach to him when he became the majority leader.

It is clear that Reid knows how to keep his caucus in line. During the first 100 days of his tenure:

With his efforts almost entirely focused on his own flock, Reid was able during his first 100 days to persuade the typical Democratic caucus member to stay in the fold on 19 of every 20 votes that fell mainly along party lines, which were about half of all the floor votes between January and the spring recess. The typical Republican, in the same period, stuck with the caucus on about seven of every eight party-line votes.<sup>146</sup>

Yes, due to the slim majority obviously Reid was forced to be very tough on his own caucus, but it is an affirmation of his style: a determined partisan that would do anything to achieve his agenda. It should be noted that this style is different that LBJ's, who was known to work with an iron first on his colleagues. Manu Raju writes:

[Reid] unlike his Democratic predecessor, Tom Daschle — prides himself in taking a hands-off approach and giving his committee barons wide latitude to do their work...Reid, in his fourth term, is expert at working the arcane procedures of the Senate to keep the chamber running, and he generally prefers results over specific policy positions. He doesn't employ LBJ-like tactics on senators, who have enormous power under the rules to exert their independence.<sup>147</sup>

Reid's leadership style demonstrates that determination means perseverance and an emphasis on results over dictating or heavy handedness. Indeed, his caucus has responded positively to this style.

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<sup>146</sup> Daphne Retter, *Reid Takes Old Approach to His New Job*, 1061.

<sup>147</sup> Manu Raju, *Debate tests Harry Reid's leadership style*, " (Politico: July 29, 2010).

While some may call Reid's style determined, others would give it another name: "tenacious." Jennifer Steinhauer writes about his leadership style, "how tenacious Mr. Reid is willing to be — and whether he will extract votes one by one as he has for other big pieces of legislation — may well determine the fate of the measures."<sup>148</sup> Whether he is a tenacious leader or very determined, it is difficult to argue against the fact that Reid has been a successful leader in terms of passing major legislation and achieve results. Those on the other side of the aisle see him as overtly partisan who does not believe in compromise. However, there may be another reason why Reid is adverse to compromise than simply calling him a partisan.

As discussed in a previous chapter, the use of the filibuster has increased vastly over the last decade. The use of the filibuster is of course not new; however, since Reid's tenure it has been used to a point where gridlock and dysfunction has characterized the Senate. In order to stop a filibuster, Reid must conjure 60 votes to stop it. At a time he did have these votes, but for the majority of his tenure he has not. One would think that this would cause him to compromise to create a supermajority, but the Republicans have shown little indication that they too are willing to buck. The determination or "tenaciousness" may stem not simply from a partisan standpoint, but one that evolves from a view that the Senate must enact legislation and that for the sake of the body it cannot merely be a place where policy or action is not accomplished. Thus, as mentioned in the first chapter, Reid changed filibuster rules for presidential nominations (this has been repealed been called the "nuclear option" by the media). This can be seen as Congress giving more power to the executive (as it has been for decades and Obama Reid

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<sup>148</sup> Jennifer Steinhauer, *As Views Shift on Guns, Reid Corrals Senate*, (New York Times: March 31, 2010).

are the same party), or it can be viewed as step in a direction for maintaining the integrity of the Senate. By this action, Reid will now be seen as a momentous majority leader. Obviously, whether one thinks that is a positive or negative connotation will come from their partisan view.

*Accomplishment- Determination and the Affordable Care Act*

Mike Mansfield was known to defer to the executive. Trent Lott was known to be a partisan against the executive. Harry Reid, for the duration of his tenure that the executive was a Democrat, has been known to work hand-in-hand, and even take the lead from the executive. The debate over the passage of the Patient Protection and Affordable Care Act is a prime example of Reid's determination. The legislative history behind this law is extremely interesting. Reid gave concessions to conservative Democrat Ben Nelson (D-NE) to ensure his support of the original bill.<sup>149</sup> It passed with Nelson's 60<sup>th</sup> vote. However, the untimely death of Senator Ted Kennedy (D-MA) and the unexpected victory of his Republican replacement Scott Brown, made it impossible for Reid to bulldoze pass a filibuster, as the House and Senate bills were different, and forced the bill to scale down in terms of policy impact.

In the end, Reid and Democratic leaders were able to pass the healthcare legislation through the reconciliation process, which by law, only needed a simple majority to invoke cloture because it involves changing the budget. Jonathan Chait explains:

Now that they've lost the ability to break a filibuster, Democrats plan to have the House pass the Senate bill, and then use reconciliation to enact changes to the Senate bill demanded by the House. These changes -- higher subsidy

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<sup>149</sup> *Cornhusker' Out, More Deals In: Health Care Bill Gives Special Treatment*, (Associated Press, March 9, 2010).



levels, different kinds of taxes to pay for them, nixing the Nebraska Medicaid deal -- mainly involve taxes and spending. In other words, they're exactly the kinds of policies that are well-suited for reconciliation.<sup>150</sup>

This legislative history is a testament of Reid's determination and grit. Determined to get something, anything, accomplished was his main motivation. Reid was willing to give concessions that at the time were very controversial. Realizing that he could break a Republican filibuster, Reid, for the sake of accomplishing something, agreed to scale down the bill and support a bill that was not as aggressive as the original piece of legislation. Changing the filibuster rules on nominations and passing the Affordable Care act are prime examples that Reid is concerned about the Senate not falling victim to gridlock- something no matter how small is a victory in the end.

Table 4

**Number of Measures Passed in the Senate during Senator Reid's Tenure as Majority Leader:**

| <b>Year</b>  | <b>Number of Measures Passed</b> |
|--------------|----------------------------------|
| 2007         | 621                              |
| 2008         | 589                              |
| 2009         | 478                              |
| 2010         | 569                              |
| 2011         | 402                              |
| 2012         | 479                              |
| 2013         | 356                              |
| 2014         | 501                              |
| <b>Total</b> | <b>3,995</b>                     |

Source: Us Senate Historic Office

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<sup>150</sup> Jonathan Chait, *A Brief Reconciliation Primer*, (New Republic: February 20, 2010).

The average number of measures passed during Senator Reid's tenure as Majority Leader is **499**. This number is indicative of the current situation in the Senate, an institution that gridlock reigns supreme.

### *Conclusion*

Senator Reid had a productive tenure as Majority Leader. Senator Reid faced similar concerns that Senator Lott did but instead of trying to find a diplomatic solution, Reid became a force to be reckon with. The process of passing the Affordable Care Act (which was examined in the previous chapter), is a remarkable achievement. This is attributed to his strong determination and personalized relationship with members of caucus. Ultimately, due to how the Senate works as an institution, it was a legislative procedure and tactic that passed the bill, not his style.

The style remained relevant throughout the process, but without using a legislative tactic that would not require the 60 vote threshold to invoke cloture the bill would not have succeeded. This is a key example of the Senate's institutional rules and norms having the most impact on whether a piece of legislation passes, not the leadership style of the Leader. Yes, Leader Reid used that legislative procedure, but this was merely a strategy to take advantage of Senate rules, not an attribute of a leadership style.

## **Analysis & Conclusion**

### *Styles of Leadership- Impact on the Policy Process*

It is apparent that the three leaders studied, Mike Mansfield, Trent Lott, and Harry Reid, have different leadership styles. It is also apparent, that even though individual senators have increased their power through the holding process and filibustering (as mentioned in the first chapter), leadership style is still relevant in determining the public policy process in the Senate. Yet, ultimately these institutional constraints such as floor procedures have more of an impact. Styles are fluid and unpredictable, as it is a reaction to current events institutional constraints. The majority leader is an important actor. To claim that a majority leader is not relevant in the modern Senate because it is such an “individual” institution would be misguided. As these case studies have proven, leadership style can overcome the individualized nature of Senate, but also, usually it does lose out to this factor as well.

Mansfield’s deference to this day has had a lasting impact on the relationship between the congress and the president. Indeed, being the president’s political actor in the body weakened the role of the leader. Obviously, partisan considerations certainly are true, but one can still be a partisan but not be used as a “puppet” for the administration. Harry Reid is a prime example of this dichotomy. Instead of viewing himself as a “puppet” of the Obama administration, Reid has attempted to act as a co-equal partner. Now, this may partly be in truth due to Obama allowing Reid and then Speaker Nancy Pelosi (D-CA) to take the lead on the Affordable Care Act, but it is also a testament to his leadership style.

From an outside perspective Trent Lott would seem to possess the best leadership characteristic. A successful majority leader should both be pragmatic when he/she needs to be, but also needs to be partisan so that he/she maintains the support of the caucus/conference. Lott had these attributes. However, Lott was did not show enough partisanship. The Clinton impeachment process made it possible for Lott to lose the trust of his colleagues. Perhaps he should not have taken a backseat role during the House proceedings. Lott's call for a quick trial was also suspect to his conference. Pragmatism and partisanship usually do not go hand-in-hand. At some point, one has to overcome the other. Lott knew that Clinton would not be removed from office and that the process was hurting the Republican brand, but this pragmatic approach sealed his fate. Lott did not possess the right amount of partisanship during a time when polarization was starting to take hold of the American political process.

As of late 2013, Harry Reid has proven himself to be a very effective leader. Not very known for his brashness, Reid has allowed his caucus to be free yet at the same time they have such a high confidence in him that for the most part they do not stray too far away. Out of the three leaders studied, this type of leadership style is the best. Reid has ensured that the Senate would be a major player in the policy process but being more productive (yes, it is not very productive, but in terms of major policy the Senate has accomplished quite a bit under Reid). Reid's style has also ensured that the Senate is not beholden to the wishes of the administration. Perseverance and determination does allow for some compromise to occur, but it does not change the overall character of certain legislative items. It also demands respect, which in a body where there are 100 very strong political actors is a noteworthy accomplishment. It will be interesting to observe

how Reid's style remains during the rest of his tenure. One thing will not change though and that is his emphasis on results and ensuring that the Senate does not become a place where radical ideologues dictate the agenda.

### *Conclusion*

The leadership style of the Senate Majority Leader does matter in the public policy process. However it is the strategy and tactics used by the Leader that is influential during the process, not their style. Leadership style is a reaction to policy issues during a certain time period, therefore is fluid and unpredictable. Legislation in the Senate is dependent upon how the majority leader acts- whether he/she compromises or promotes gridlock, whether he/she is open to compromise or partisanship, and whether he/she promotes legislative branch driven policy or acting in a subservient role to the executive. This is a sense of strategy of ensuring the Senate is a major player during the process, not a style.

The strategy and tactics of the majority leader impacts the policy process in the following ways. First, it impacts what the relationship is between the administration and the Senate, namely whether who dictates policy. This style may change when a president or majority leader is not of the same party, but it still has an enormous impact on the process. Second, leadership styles have an impact on the relationship between the role of the conference/caucus has on producing legislation. An example of this relationship is whether junior members or ideologues have a say on a matter, or whether the Leader himself has input on a particular bill greatly affects the final product. Lastly, leadership style impacts the very content of the bill. It is important to note if a leader promotes compromise (to some that would be watering down a piece of legislation), or whether a

leader is “hell-bent” on passing a piece of legislation as it is written. These different styles can certainly change the very content of the bill.

However, due to the fact that leadership styles are impacted by historic time periods and events and not just character traits, it has been observed that styles are fluid. This fluidity is the reason why leadership style is not the most important facet of the legislative process. Floor procedure that was discussed in the first chapter, is more rigid and therefore has a more lasting impact overall on the policy making process. Majority Leaders do matter, but their style does not as historic time periods forced their reactions to the policy issues of their time. Majority The way Leaders do have an impact on the policymaking process is their strategy and tactics they use, not their overall style.

The Senate is a body of 100 influential actors. However, the majority leader is still the main actor. He/she can easily change legislation by the very nature of his/her leadership style. The leadership style of the majority leader determines whether a bill is watered down, if it ever receives a vote, or if it is pushed enough to break through partisan gridlock. Like the president and speaker of the House, the Senate majority leader has an important role in the policy process. However, it may not be the most important actor in this relationship, as he/she has to continuously struggle with a body that is conducive to individual leaders assuming magnified roles.

## **Chapter Five: Conclusion- How The Senate Must Change**

As one can see, the Senate plays an important role in the policymaking process. The three main facets that were discussed in the preceding chapters demonstrate that as an institution, the Senate is far from being perfect. This paper has examined how these facets impact the legislative process and what recommendations, if any, should be made. However, the Senate is a complex legislative body to study, and further work in others should be applied to complete a larger picture.

### **Floor Procedures**

By far the most negative aspect of the Senate on the policymaking process is the abuse of the filibuster. The original intent of the filibuster was to ensure that the minority was protected. In the modern era, however, that is far from the case. This is not new though. Even as early as the late 1800s, it became apparent that this filibuster was being abused. This issue became such a problem that in a body that is notoriously slow to change its rules and procedures the Senate decided to implement a cloture vote that would end a filibuster. This proved to work in the Senate until the 1950s and 1960s when controversial issues were held up due to the objectives of a minority of Senators. The problem was further exacerbated when the Senate created a two-tier system which effectively allows Senators to block legislation by the usage of holds. This system was originally intended to alleviate the gridlock caused by filibusters; however, its impact has been the exact opposite.

The filibuster has also increased the individual nature of the Senate. Senators are extremely powerful as all it takes is one Senator to hold up and stop the legislative process. This in no way should be an interpretation of protecting minority rights. What

was originally intended as a positive step for democracy has transformed into an authoritarian mechanism. The institution is larger than one individual, however, the rules and norms that of the institution has been conducive for such behavior to exist. That must end, for the sake of the policymaking process and democracy the status quo must change.

### *Recommendations*

This paper recommends that the filibuster should be abolished as we know it, meaning that cloture can be invoked by a simple majority vote. Before spelling out the reason why, one should examine the arguments of why it should not end and other alternatives that exist. Those who support the filibuster believe that it is a necessary part of the policymaking process because it slows the process down. This, they argue is good for democracy as it does not allow for knee-jerk reactions and promotes slow deliberation of policies- which they see was an original intent of the Senate. The author of this paper disagrees. What separates the US from a parliamentary system is that it has numerous checks and balances that, as part of the policymaking process, inevitably “slows down” legislation. The filibuster was not created by the founding fathers and is merely a Senate procedure and not part of an overall political theory like checks and balances. There is ample opportunity for slowing down legislation in the Senate that does not involve the filibuster. Namely one can use the amendment process, which does allow for the minority views to be heard.

Abolishing the filibuster as we know it would also solve the tension between individualism and the body’s role in the policymaking process. Without the ability of Senators holding legislation, it takes away the individual nature of the Senate and empowers the institution as a whole. Senators can still exert their influence in other areas



in committee and the amendment process. They cannot however, take the Senate for hostage and would be forced to work with their members in constructing policy- making the Senate a more deliberative place.

Some have proposed alternatives or more moderate fixes to the filibuster. One of these alternatives includes mandating that in order for one to filibuster a Senator must on the floor, the best example of this would be the main character's notorious filibuster in *Mr. Smith Goes to Washington*. This would abolish holds by senators and would put the burden back on the minority, not the majority as the system currently does. Another approach is to reduce the threshold required to invoke cloture- whether the number would be reduce gradually as a filibuster begins or to just reduce the number to 55. This would make it easier to invoke cloture.

These fixes are not bad and could potentially fix the overall problem of gridlock; however, this author opposes the filibuster from both a practical and principled matter. In the United States, elections matter. The filibuster, whether in its current form or reformed, is anti-democratic in nature. It has made elections for the US Senate almost irrelevant, as in order to advance the majority party's policies they must have a super-majority. The people voted for one particular party over the other to control the Senate, and in any republic their voices should win out. That is not the current dynamic and it is harmful to both the process of passing legislation as the institution loses legitimacy and for democracy as the majority does not control- authoritarian individuals senators do. The filibuster, once a procedure that promotes democratic values by protecting minority rights is now a vehicle to destroy the democratic rights of the electorate. It is time to abolish the filibuster.

Is this realistic? Yes, if one looks at the Senate's history, this would not be the most dramatic change to happen. The direct election of Senators is much more profound change to the institution. The Senate has been able to adapt and change before, and it can do the same when it comes to the filibuster. Also the recent change of the filibuster to executive nominations is an indication that total abolishment could one day come. After this rule change, full abolishment is not much fantasy anymore.

### **Committees**

With given any legislative body that has a committee system, "turf wars" over what each committee has jurisdiction over is inevitable. This is major problem in the House, has it exacerbates further issues such as the relationship between senior and junior members and the relationship between the Speaker and committee chairmen. However, this problem of committee turf wars is not as prevalent an issue in the Senate. This can be attributed to the individual nature of the Senate. The committee structure itself is not as strong as the House due to how the institution allows for individual senators to be so powerful. This dynamic though is, surprisingly beneficial to the policymaking process. The weaker committee structure promotes a sense of deliberation between committees, not jurisdictional fights.

As discussed in one of the previous chapters, an example of this deliberation even extends to one of the most controversial issues the Senate has tackled: healthcare reform. Instead of arguing what committee gets what, this issue was divided amongst multiple committees and then merged into one bill. In the House, the committee system is made for an individual to make a name for themselves, a Senator does not need a committee to

gain power or more become influential. They already have that influence given the nature of the institution.

### *Recommendations*

The current structure of the Senate committee system positively impacts the policymaking process. This author makes no recommendations for change. The current system allows for deliberation and even on the most controversial issues promotes cooperation. Senators do not use committees to block legislation, as they have the power to filibuster. If the filibuster would be abolished could senators use committees to block legislation? Not exactly. With the amendment process, senators could delay bills in committee but ultimately the majority vote would win.

### **Leadership**

The Majority Leader of the Senate is a key player in the policymaking process. This individual is constrained by the institution. Therefore the leader has to develop a certain style of leadership as an attempt to overcome these constraints. There are different types of styles that can be adopted. One style is that on majority policy items, leadership should be deferred to the executive. The second is to try to offer a pragmatic approach to when a caucus/conference is to the extreme of the overall general public. The third is to show grit and no mercy on your fellow membership. Leadership style is relevant; however, it is not the final determination whether a policy moves forward or not. These styles are created by the times these individual Leaders find themselves, and not themselves. Therefore styles are fluid and therefore it is not easy to measure in terms of outcomes. The Leader him/herself is more relevant as part of the policymaking process than his/her individual style.

### *Recommendations*

As stated previously, styles are not particularly the most important aspect of the policymaking process. However, in the modern era of gridlock, one style may be the most effective. Senator Harry Reid's (D-NV) grit style as the enforcer would be beneficial for any Leader moving forward. This promotes discipline in a time where individuals have the most power. While it may not work all of the time, maintaining majority party discipline is essential in hoping to overcome some filibusters and passing legislation. Again though, this type of style only would work best because the rules of the institution and the current timeframe demand it.

### **Further Research**

This paper squarely focuses on the dynamic between the institution of the Senate and its impact on the behavior of the individual actors. It is, generally, a paper that focuses on the internal issues within the Senate. This is only half the story. It is recommended that further research should be conducted on the Senate's impact on the policymaking process. One recommendation is to study the impact that external factors have on the Senate's role in this legislative process. Namely, what is the role that outside interest groups? What about the role of the House, is it relevant? Also, the role of the President and the judiciary on the Senate's motivation to pass legislation is extremely important. External factors should also include elections and the role of special interests such as lobbyists. By examining both internal and external factors, one will have full understanding of how the Senate operates and its proper role in the legislative process.

This paper sought to study the internal dynamics within a complex legislative body, therefore it is limited. Without studying other facets of the policymaking process

(and yes, different definitions of this process) the paper may not have the final answer for Senate reform. Taken in the context of this study, however, this paper intends to be a solid foundation for additional research. Both external facets described above, other internal facets of the Senate, and different definitions of the policymaking process will give a more complete picture of how the Senate functions as a legislative body.

## **Conclusion**

The Senate is a complex legislative institution. For much of its history the Senate was a place where representatives of the states discussed sectional issues that eventually split the country into two. The body has for far too long held to this norm that it represents states and not people, as it was once originally to do. This is not the case anymore for has not been the case for nearly 100 years. The body never made the appropriate changes after direct elections were implemented, namely that now as a full fledged democratic body; perhaps it should have rules that are consistent with this principle. Abolishing the filibuster will make the Senate more democratic. The Senate must change this archaic rule for both the sake of the legitimacy of the institution and for improving the policymaking process.

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